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No. 82-1150

IN THE
Supreme Court of the United States

OCTOBER TERM, 1983

HOWARD ELLIS, et al.,

Petitioners,

v.

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, et al.,

Respondents.

ALLEN L. FAILS, et al.,

Petitioners,

v.

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX — VOLUME I

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(Continued)

PETITION FOR CERTIORARI FILED JANUARY 7, 1983.
CERTIORARI GRANTED APRIL 18, 1983.

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RELEVANT DOCKET ENTRIES*

In the United States District Court
for the Southern District of California

A. Documents filed in Ellis prior to consolidation

Ellis Docket No.	Description of Document Filed	Date Filed
1	Complaint for judgment, monetary damages and injunctive relief	3/20/73
21	First amended answer to complaint	10/3/73
41	Amendment to complaint	3/1/74 (lodged)
46	Answer to first amended complaint	3/11/74

B. Documents filed in Fails prior to consolidation

Fails Docket No.	Description of Document Filed	Date Filed
1	Complaint for judgment, monetary damages and injunctive relief	3/23/73

* *Howard Ellis, et al. v. Brotherhood of Railway, Airline and Steamship Clerks, et al.*, Case No. CV-73-1113 ("Ellis"); and *Allen L. Fails, et al. v. Brotherhood of Railway, Airline and Steamship Clerks, et al.*, Case No. CV-73-1118 ("Fails"), were filed as separate actions in the United States District Court for the Southern District of California in March, 1973. Thereafter, on February 5, 1974, these cases were consolidated. For ease of reference by this court, most documents filed in each of the aforementioned actions prior to consolidation will be grouped together under each of the *Ellis* or *Fails* heading. All documents included in this joint appendix filed after consolidation will be grouped under another separate heading.

24	First amended answer to complaint	10/3/73
40	Amendment to complaint	3/1/74 (lodged)
45	Answer to first amended complaint	3/11/74

C. Documents filed in Ellis and Fails subsequent to consolidation

Ellis Docket No.	Fails Docket No.	Description of Document	Date Filed
26	28	Stipulation and order for consolidation	2/7/74
121	145	Notice of motion and moton for summary judgment, memorandum of points and authorities in support of motion for summary judgment, with exhibits, and affidavit of Eric Scott Royce and Report on BRAC Legislative Activity.	8/26/75
141	161	Supplemental affidavit of Irving B. Ross and Exhibits "E" through "O"	10/6/75
155	171	Affidavit of Leslie E. Dennis, Exhibit G to defendants' opposition to plaintiffs' motion for summary judgment	11/17/75
155	171	Affidavit of Lloyd Ulman, Exhibit U to defendants' opposition to plaintiffs' motion for summary judgment	11/17/75

---	---	Affidavit of Willard Wirtz, Exhibit X to defendants' opposition to plaintiffs' motion for summary judgment	1/9/76
158	175	Findings of undisputed facts and conclusions of law	1/21/76
169	186	Amended order granting interlocutory summary judgment	4/14/76
212	224	Order amending interlocutory summary judgment and granting defendants' motion to relieve defendants of the requirement of further answers to interrogatory no. 5	11/29/76
257	269	Affidavit of William L. Scheri	11/25/77
265	281	Defendants' reply memorandum in support of motion in support of entry of final order, page 4 n.2	12/19/77
---	---	Transcript of proceedings	1/16/78
279	296	Pretrial order	4/11/78
291	308	Defendants' Exhibit List, Exhibits B, CA, CB, CE, CF, CH, CI, CJ, CR, CS, and CV	6/29/78
301	320	Appendix II to defendants' post trial review	10/12/78

313	331	Defendants' reply memorandum, page 39, ¶94	7/16/79
---	---	Transcript of proceedings p. 1326 l. 11 - p. 1327 l. 2	10/23/79
---	---	Transcript of proceedings	8/1/78
---	---	Transcript of proceedings	8/2/78
---	---	Transcript of proceedings	8/3/78
---	---	Transcript of proceedings	8/4/78
---	---	Transcript of proceedings	8/8/78
---	---	Transcript of proceedings	8/9/78
---	---	Transcript of proceedings	8/10/78
---	---	Transcript of proceedings	8/11/78
321	---	Findings of fact and conclusions of law	3/14/80
327	339	Judgment	7/9/80
---	---	Notice of cross appeal	8/6/80

In the United States Court of Appeals
for the Ninth Circuit

Defendants' reply brief, page 25 ¶16	9/25/81
Opinion and Judgment reported at 685 F.2d 1065 (9th Cir. 1982)	9/3/82

(Pursuant to Sup.Ct.R. 30.1, the Opinion and Judgment of the United States Court of Appeals for the Ninth Circuit has not been reproduced in this Joint Appendix. The Opinion and Judgment is reproduced fully at 1a - 16a of the Appendices in the Petition for Writ of Certiorari.)

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COMPLAINT AMENDED:
1st date: 3-20-73
2nd date:
3rd date:
4th date:

FILED
MAR 20 1973
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY E. Lindsley DEPUTY

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HOWARD ELLIS, PAMELA BALIAN, RAY SAULS, NANCY DEAN, PHYLLIS PAYNE, NOEL FONTAINE, SALLY LOUDIN Plaintiffs, v. BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE of the BROTHERHOOD OF RAILWAY,	No. 73-113-N COMPLAINT FOR JUDGMENT, MONETARY DAMAGES AND INJUNCTIVE RELIEF

AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049,

Defendants.

1. This Court has jurisdiction over this matter by virtue of Title 28, United States Code, §1337, and Title 45, United States Code, § 151 et seq. The questions presented herein arise under the Constitution and laws of the United States.

2. Plaintiffs are citizens of the United States, residents of California, and are employed by Western Air Lines, Inc. (hereinafter "Western") at San Diego, Los Angeles and San Francisco, California.

3. Defendants Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes; and its subsidiary organizations System Board of Adjustment No. 451, Air Transport Division, Skyliner Lodge Local 3001, Skyharbor Lodge Local 3014 and Arrowliner Lodge Local 3049 (hereinafter collectively referred to as "BRAC") are unincorporated associations and labor organizations whose purpose, in part, is the representation of employees for collective bargaining over wages, hours, and working conditions within the meaning of Section Two of the Railway Labor Act, 45 U.S.C., § 151 et seq.

4. Defendant California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter "the Committee") is an unincorporated association, subsidiary to and affiliated with BRAC, which has as its purpose, in part, the sponsorship of political candidates, causes and legislation in the State of California, and these activities are supported financially by a substantial amount of funds derived from the compulsory dues and fees exacted from plaintiffs.

5. Western Air Lines, Inc. is a corporation authorized to and doing business in the State of California, engaged in the transportation of passengers and freight in interstate commerce.

6. At all times material hereto, Western has maintained a collective bargaining relationship with BRAC governing the terms and conditions

of employment of plaintiffs as described below. BRAC was and is the exclusive bargaining agent for the craft or class of employees in which plaintiffs are employed.

7. The collective bargaining agreement applicable at all times pertinent hereto includes a provision executed by BRAC and Western on October 27, 1966 making union membership obligatory for all new employees, and requiring BRAC members to maintain their membership. A copy of this provision is attached hereto, marked Exhibit A, and incorporated herein by reference.

8. Under the terms of the aforesaid agreement employees hired prior to October 27, 1966 were not required to join BRAC or make payments to it. However, by a separate letter agreement of that date, Western agreed to compel such employees to join BRAC at such time as BRAC was able to demonstrate a membership level of 85% of the bargaining unit. By a letter agreement of February 26, 1971, BRAC and Western implemented and modified the October 27, 1966 agreement. Those agreements are attached hereto, respectively marked Exhibit B and Exhibit C, and incorporated herein by reference.

9. The agreements compelling union membership or the payment of initiation fees and dues, referred to in paragraphs 7 and 8 above, are hereinafter collectively referred to as the "compulsory union membership agreement."

10. By letters of March 1, 1971 and March 4, 1971, plaintiffs were advised by BRAC and Western that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues. Examples of those letters are attached hereto, respectively marked Exhibit D and Exhibit E, and incorporated herein by reference.

11. By the terms of the compulsory union membership agreement and other provisions of the collective bargaining agreement, Western has obligated itself to enforce such provisions against employees declining to pay union dues and fees, by threatening or effecting their termination. Plaintiffs have been advised by responsible representatives of Western and BRAC that they will be similarly discharged from employment if they fail or refuse to pay the BRAC initiation fees and dues.

12. Plaintiffs have declined to sign applications for membership in BRAC but have, under the obligation imposed upon them by the

compulsory union membership agreement, paid and continue to pay agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues. Plaintiffs' payment of dues and fees to BRAC is involuntary, and is done solely because of the duress and coercion exerted by threatened termination of their employment.

13. Plaintiffs have each advised BRAC of his or her specific objection to the exaction of dues for political purposes and for all other purposes not directly related to collective bargaining. Such objections were stated in substantially the following form:

> As an employee of Western Air Lines, I feel that the Brotherhood of Railway, Airline and Steamship Clerks does not properly represent my interests and I protest the compulsory "agency fee" I must pay the Brotherhood of Railway, Airline and Steamship Clerks, in order to retain my job. In addition, I hereby protest the use of these fees for any purpose other than the cost of collective bargaining and specifically protest the support of legislative goals, candidates for political office, political efforts of any kind or nature, ideological causes, and any other activity which is not a direct cost of collective bargaining on my behalf. I demand an accounting and refund from the Brotherhood of Railway, Airline and Steamship Clerks of all fees exacted from me by the so-called "agency fee".

Count I

14. Plaintiffs reiterate and reallege all of the allegations set forth in paragraphs 1 through 13 above.

15. The compulsory dues and fees exacted from plaintiffs under the aforesaid compulsory union membership agreement have been used and are being used in substantial amounts by BRAC and the Committee over the objections of plaintiffs for the following illegal and improper purposes:

> (A). To support by direct and indirect financial contributions and expenditures the political campaigns of candidates for public office, including the offices of President and Vice-President of the United States, the Senate and House of Representatives of the United States, and various state and local

offices; many, if not all, of such candidates being opposed by plaintiffs.

(B). To propagate political and economic doctrines, concepts, idelogies [*sic*], and legislative programs which are opposed by plaintiffs, thereby imposing upon them conformity to those doctrines, concepts, ideologies and programs.

(C). To cover the cost of publications, convention expenses, strike benefits, contributions to organizations and individuals, recreational activities, a death benefit plan, and various other programs.

The foregoing expenditures are not reasonably necessary to the negotiation and administration of collective bargaining agreements, or the adjustment and settlement of grievances and disputes, nor are they necessary or germane to the representation of plaintiffs. Such expenditures have been accompanied by BRAC's use of its officers, employees, representatives and facilities, with attendant expense, to support or oppose particular candidates or legislation, and to conduct voter registration drives and "get out the vote" campaigns among persons thought to be favorably inclined to BRAC sponsored or endorsed candidates.

16. The exaction of dues and fees from plaintiffs under threatened loss of their employment, and the use of such payments for the purposes stated above, imposes upon them political and ideological conformity, prevents them from exercising their rights and privileges as citizens of the United States, deprives them of their civil rights guaranteed to them under statutes of the United States, injures them in their persons and property, and abridges rights guaranteed to them under the First, Fifth and Ninth Amendments of the United States Constitution; which Amendments guarantee to individuals freedom of association, freedom of thought, freedom of speech, freedom of political action, freedom to pursue the occupations of their choice, freedom from unwarranted invasion of their privacy, and other fundamental personal rights and liberties.

17. The aforesaid deprivation and abridgement of the statutory and constitutional rights of plaintiffs is accomplished by BRAC through its collective bargaining agreement with Western, acting under authority of the Railway Labor Act, 45 U.S.C., § 151, et seq. The Railway Labor Act authorizes the designation of BRAC as exclusive bargaining agent for all

employees in the collective bargaining unit in which plaintiffs are employed, and empowers BRAC and Western to enter into the form of compulsory union membership agreement described above.

Count II

18. Plaintiffs reiterate and reallege all of the allegations of paragraphs 1 through 13 and 15 through 17.

19. As the statutory exclusive bargaining representative of plaintiffs BRAC owes each of them the fiduciary duty of fair representation, but has wilfully and persistently breached this duty, and breached an implied condition of the collective bargaining agreement by expending a substantial portion of their dues and fees for purposes not reasonably related to the negotiation and administration of collective agreements nor to the adjustment and settlement of grievances and disputes. Such expenditures are not in furtherance of BRAC's legitimate objectives and obligations as collective bargaining representatives of plaintiffs and BRAC's continuing diversion and conversion of their funds is arbitrary, in bad faith, and constitutes hostile discrimination against plaintiffs.

Count III

20. Plaintiffs reiterate and reallege all of the allegations of paragraphs 1 through 13, 15 through 17, and 19.

21. BRAC has established an internal procedure whereby persons who object to use of their monthly dues for political purposes may register that objection and reduce the amount of monthly dues payments. This provision is set forth in Article 27 of the BRAC Constitution, and has existed in substantially the following form at all times material hereto:

> Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced three and one third cents (3 1/3 c) per month, by notifying his Financial Secretary in writing and paying his dues direct to said Financial Secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the Financial Secretary, in writing, and cannot be retroactive. The Financial Secretary will acknowledge receipt of notice.

22. BRAC has arbitrarily, in bad faith, and with hostile discrimination denied participation in this procedure to plaintiffs. BRAC has breached its fiduciary duty by refusing to extend or apply the dues reduction provision to plaintiffs, who have declined formal union membership, but remain under the obligation to pay agency fees and dues in amounts equivalent to BRAC initiation fees and monthly membership dues.

23. The dues reduction procedure set forth in paragraph 21, even if it were available to plaintiffs, is illegal, arbitrary, and discriminatory in its structure and operation for the following reasons:

(A). It provides for no reduction of the initiation fees, yet plaintiffs aver upon knowledge and belief that a substantial amount of revenue BRAC derives from such fees is used for political and ideological purposes.

(B). The amount of dues reduction (3 1/3 cents per month) is patently unrelated to the extent of prohibited expenditures. Two examples follow:

1. Article 27, Section 4(a) of the BRAC Constitution provides that 3 1/3 cents per month from each member's dues shall be applied to the "Legislative Fund Account (Grand Lodge)."

2. Article 23, Section 4(b) of the BRAC Constitution authorizes each State Legislative Committee to levy against each member in the state a levy "*of not less than thirty cents*" per month for "the transaction of its business." (Emphasis Added). This amount is paid from each member's monthly dues. Such levies are made against plaintiffs.

(C). No procedure is afforded by which dissenters such as plaintiffs may ascertain the true relationship between prohibited spending and the miniscule amount of the dues reduction.

(D). Plaintiffs are informed and believe, and therefore aver, that amounts of money expended by BRAC for political and ideological purposes and other purposes not germane to

collective bargaining are greatly in excess of the amount by which a dues reduction may be allowed under the aforesaid procedure.

CONCLUSION

Plaintiffs have no adequate remedy at law for the harm and damage resulting from the acts and conduct of defendants, as hereinabove alleged, because of their prospective loss of their employment, the loss of their seniority rights, the loss of diminution of their respective trade skills during any prolonged period away from their jobs and because they are and will be deprived of their liberty and property without due process of law in violation of their rights under the First, Fifth and Ninth Amendments of the United States Constitution. Irreparable harm, damage and injury will be done to plaintiffs unless the acts and conduct of defendants above complained of are permanently enjoined.

WHEREFORE, plaintiffs pray:

1. For a declaratory judgment holding that the herein described compulsory union membership agreement in its operation and effect denies and abridges plaintiffs' constitutional and statutory rights.

2. For an order requiring BRAC to account to plaintiffs for all sums exacted from them pursuant to the above-mentioned collective bargaining agreement; to account in detail for the allocation, expenditure and disposition of said funds; to include in said accounting the identity of the recipients, corporate, associate, partnership, individual or otherwise, as the case may be, of said funds.

3. For a permanent injunction restraining BRAC from enforcing as against plaintiffs the compulsory union membership agreement provisions of the collective bargaining agreement described herein, insofar as such provisions are used to compel payment for purposes unrelated to the negotiation and administration of collective agreements, or the adjustment and settlement of grievances and disputes.

4. That the Court enter an order requiring BRAC to make available to plaintiffs any procedure adopted for the refund or reduction of membership dues and fees in response to a protest against their expenditure for political purposes, or for other purposes not related to

collective bargaining. Further, that defendant BRAC be required to establish a procedure for an accurate correlation of the dues reduction or refund to amounts actually expended by it for purposes unrelated to collective bargaining or the settlement of disputes; and if a refund procedure is utilized, that it ensure prompt return of such funds.

5. For a judgment allowing plaintiffs monetary damages for injuries sustained as a result of defendants' unlawful and unwarranted interference with and deprivation of their constitutional, civil, statutory and contractual rights.

6. For attorneys' fees, costs, and for such other and further relief as the Court may deem just and proper.

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION

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By _____
John L. Kilcullen

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EXHIBIT A

This Agreement is made by and between Western Air Lines, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, in accordance with the provisions of the Railway Labor Act, as amended.

(1) Each employee in a classification under the basic Agreement who is a member of the Union on the effective date hereof and each such employee who becomes a member after such date, shall, as a condition of employment, maintain membership in good standing in the Union.

(2) Each employee hired in a job classification under this Agreement after the effective date hereof shall, after completion of his/her sixtieth (60th) day of employment, acquire and maintain membership in the Union.

(3) Membership in the Union means the employee has tendered payment of initiation fees and regular monthly dues uniformly required by the applicable constitutional provisions of the Union for employees of like status and in accordance with the Railway Labor Act, as amended.

(4) It is understood and agreed that the requirements of Paragraphs (1) and (2) do not apply to employees to who membership is not available under the same terms and conditions as are generally applicable to other employees of like status.

(5) Employees required under this Agreement to maintain membership in the Union who are transferred or assigned to job classifications outside the basic Agreement, employees on leave of absence without pay for a period of excess of thirty (30) days, and employees on furlough shall not, during such periods, be required to maintain membership in the Union provided, however, upon return from leave, furlough or assignment or transfer to a job classification under the basic Agreement such employee must reinstate his membership within thirty (30) days.

(6) Employees required under this Agreement to acquire and/or maintain membership in the Union and who fail therein are subject to termination in accordance with the following provisions:

a. The General Chairman will notify the employee in writing of his failure to comply with the provisions of this Agreement and afford to such employee the opportunity to comply, or if he disputes the charge that he has failed to comply, he shall be given the opportunity of a hearing with the General Chairman to verify the applicable facts.

b. If the facts show the employee has not complied with this Agreement and the employee has not, within fifteen (15) days thereafter, taken steps to comply, the General Chairman may notify the Company in writing that such employee is not entitled to continue in employment. Such notice should be sent to the Director-Labor Relations, with a copy to the employee.

c. Upon receipt of such notice, the Company will, within five (5) days, send to the employee a notice of termination which shall become effective three (3) weeks from the date of mailing, subject to Paragraph (8) hereof.

d. If the employee disputes the charge of noncompliance, he may appeal directly to the Director-Labor Relations. In this event, a hearing shall be held in the same manner as any other grievance and all time limits for decision and appeal shall apply.

e. It is understood and agreed that (1) the Company will not send a termination notice as sent forth in Paragraph (6)c in a disputed case until a final decision has been reached, and (2) at any time prior to termination, the employee may tender the necessary dues and/or initiation fees.

(7) An employee terminated at the request of the General Chairman under this Agreement shall be deemed to have been discharged for cause and the Company shall not be liable for any wages or pay claims of any type from such employee. In the event of a court judgment to the effect the discharge was improper, the Union hereby agrees to hold the Company harmless and will reimburse the Company for any costs whatsoever involved.

(8) In any event, it is agreed the Company will not be required to terminate any employee under this Agreement until the services of a qualified replacement is available.

(9) The Company agrees that upon receipt of a properly executed Authorization for Payroll Deduction, it will make a single monthly deduction from an employee's earnings, after other deductions authorized by the employee or required by law have been made, to cover his current standard monthly Union dues uniformly levied in accordance with the constitution and by-laws of the Union, as set forth in the Railway Labor Act.

(10) Any Authorization for Payroll Deductions under this Letter of Agreement shall be effective two (2) weeks following its receipt by the Company's Payroll Department at the Company's General Office in Los Angeles, and shall apply to the next pay check from which dues deduction is made.

(11) The Company will remit to the designated Union office a check in payment of all dues collected as soon as practicable after the payday on which deductions were made.

(12) Collection of back dues, dues not deducted because of insufficient current earnings, dues missed because of clerical error or dues missed due to delay in receipt of the Authorization for Payroll Deductions shall be the responsibility of the Union and not subject to payroll deduction.

(13) In the event the amount of the standard dues uniformly levied are changed, it shall be the sole responsibility of the employee and the Union to notify the Company and to make any necessary adjustments between themselves of amounts deducted from the employee's earnings. So far as the Company is concerned, any such changes shall be made in accordance with the time limits set forth in Paragraph (10) of this Letter of Agreement.

(14) An Authorization for Payroll Deduction under this Letter of Agreement once executed and delivered to the Company shall be irrevocable for the term of the basic Agreement or for a period of one (1) year, whichever is the lesser, and shall renew itself for successive yearly or applicable periods thereafter unless the employee serves written notice on the Company to revoke such Authorization for Payroll Deduction at least sixty (60) days and not more than seventy-five (75) days prior to any periodic renewal date, provided, however, an Authorization for Payroll Deduction shall automatically be revoked if:

a. The employee transfers to a position with the Company not covered by the basic Agreement between the parties.

b. The employee's services with the Company are terminated.

c. The Union ceases to represent the employees covered under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 27th day of October, 1966.

FOR THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERDS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES	FOR WESTERN AIR LINES, INC.
/s/ Lyle McKinney	/s/ Terrell S. Shrader
/s/ Richard R. Calkins	/S/ Philip E. Peirce
/s/ Robert L. Dennis	/s/ Dan A. Zaich

EXHIBIT B

WESTERN AIR LINES, INC.
LOS ANGELES INTERNATIONAL AIRPORT
6060 AVION DRIVE
LOS ANGELES, CALIFORNIA 90009

OFFICE OF THE VICE PRESIDENT
INDUSTRIAL RELATIONS

October 27, 1966

Mr. Lyle McKinney
General Chairman
Brotherhood of Railway Clerks
Suite 526, Airport Office Building
8939 South Sepulveda Boulevard
Los Angeles, California 90045

Dear Mr. McKinney;

This will confirm to you my commitment to grant to the employees as represented by the Air Transport Division of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees a Union Shop Agreement upon request and a showing that at least 85% of the employees covered are members in good standing.

Very truly yours,

/s/
TERRELL S. SHRADER

TSS:lm

MEMORANDUM NO. 7

EXHIBIT C

LETTER OF AGREEMENT

This Letter of Agreement is made and entered into by and between Western Air Lines and the Brotherhood of Railway and Airline Clerks.

The parties hereto agreed as follows:

(1) Paragraph (1) of the Letter of Agreement dated October 27, 1966 will be amended to read as follows:

> "Each employee in a classification under the basic agreement will be required to acquire and maintain membership in the Union except that each employee hired prior to October 27, 1966 who desires to maintain employment with Western but does not desire membership in the Union may, instead of acquiring membership, tender to the Union a service charge equal to the initiation fee and monthly dues that uniformly imposed on Union members."

(2) Employees who fail to meet the provisions of Paragraph (1) of this Letter of Agreement within sixty (60) days of the date of this letter are subject to termination in accordance with the provisions of the Letter of Agreement dated October 27, 1966.

This Letter of Agreement is signed this 26th day of February, 1971.

FOR THE BROTHERHOOD OF
RAILWAY AND AIRLINE CLERKS

FOR WESTERN AIR LINES, INC.

APPROVED BY:

EXHIBIT D

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL—CIO—CLC SYSTEM BOARD OF ADJUSTMENT NO. 451

AIR TRANSPORT DIVISION

WILLIAM H. GRANT General Chairman
ROBERT L. DENNIS Vice General Chairman
CAROLINE K. SEEL General Secretary-Treasurer

March 1, 1971

Dear Non-Members - Western Airlines:

On February 26, 1971, BRAC and Western Airlines entered into Agreement whereby each employee in a classification under the basic agreements will be required to obtain and maintain membership in the Union, except that each employee hired prior to October 27, 1966 who desires to maintain employment with Western, but does not desire membership in the Union may, instead of acquiring membership, tender to the Union a service charge equal to the initiation fee and monthly dues which are uniformly imposed on Union members.

Employees who fail to meet the provisions of this Agreement within 60 days from the date of signing of said Agreement, are subject to termination in accordance with the provisions of the Letter of Agreement dated October 27, 1966.

The purpose of this letter is to make it convenient for you to fulfill your obligation to join the Union. Please be advised that you should tender the initiation fee of $10.00 and one month's dues of $6.50. In the event that you were a member of the Union prior to October 27, 1966, you should instead, tender a reinstatement fee of $15.00 and one month's dues of $6.50.

We are enclosing for your convenience, an application for membership and dues check-off form which should be completed by you and returned to us with the fees before April 27, 1971.

Very truly yours,

William H. Grant
General Chairman

EXHIBIT E

Western Airlines

March 4, 1971

TO WHOM IT MAY CONCERN:

In October of 1966, the Company and the BRAC signed a Maintenance of Membership Agreement which provided that any employee who at that time was a member of the Union or who was hired after 10/27/66 would be required to acquire and maintain membership. In addition, the Company agreed that at such time as 85% of the employees covered by the Agreement became members of the Union, the remaining 15% would be required to become members. As of 2/22/71, 85% of the employees covered by the Agreement are Union members.

This letter is to advise you that you are now subject to a Letter of Agreement signed on 2/26/71 which provides that you will be required to acquire and maintain membership in the Union; however, if you do not desire membership you may instead tender to the Union a service charge equal to the initiation fee and monthly dues that are uniformly imposed on Union members. This obligation must be met within 60 days (by April 26) or you will be subject to termination in accordance with the provisions of the Letter of Agreement dated 10/27/66. Within the next few days the Union will be contacting you directly concerning this obligation.

D. S. Neel, Jr.
Vice President, Service (Line)

BODLE, FOGEL, JULBER, REINHARDT and ROTHSCHILD
GEORGE E. BODLE
STEPHEN REINHARDT
JOEL N. KLEVENS
5900 Wilshire Boulevard, Suite 2600
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FILED
OCT 3 1973
CLERK, U. S. DISTRICT COURT
SOUTHERN DIST. OF CALIFORNIA
BY C. S. Ruhnke DEPUTY

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Attorneys for Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HOWARD ELLIS, PAMELA BALIAN, RAY SAULS, NANCY DEAN, PHYLLIS PAYNE, NOEL FONTAINE, SALLY LOUDIN, Plaintiffs, vs. BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHERHOOD OF RAILWAY AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE of the BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION	CIVIL NO. 73-113-N FIRST AMENDED ANSWER TO COMPLAINT

EMPLOYEES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049,

Defendants.

Defendants BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE OF THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049 (hereinafter collective referred to as "BRAC"), for answer to the Complaint on file herein, admit, deny and allege as follows:

1. In answer to the allegations of paragraph 1, defendants deny each and every allegation contained in said paragraph.

2. In answer to the allegations of paragraphs 2 and 3, defendants admit each and every such allegation.

3. In answer to the allegations of paragraph 4, defendants admit that the California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes is an unincorporated association, subsidiary to and affiliated with the BRAC, that the Committee sponsors political candidates, causes and legislation in the state of California, and that these activities are supported financially by thirty cents per member per month derived from the compulsory dues and fees paid by plaintiffs and others. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 4.

4. In answer to the allegations of paragraphs 5 and 6, defendants admit each and every allegation.

5. In answer to the allegations of paragraphs 7 and 8, defendants

admit that the agreements attached to the complaint as Exhibits A, B, and C are agreements executed by BRAC and Western and that said agreements set forth terms and conditions relating to the obligations of employees with respect to BRAC. Except as expressly admitted, defendants deny each and every allegation of paragraphs 7 and 8.

6. In answer to the allegations of paragraph 9, defendants admit that plaintiffs refer in their complaint to the union security provisions of the collective bargaining agreement as "compulsory union membership agreement."

7. In answer to the allegations of paragraph 10, defendants admit that plaintiffs were advised by BRAC by letters of March 1, 1971, that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues and that examples of those letters are attached to the complaint and marked Exhibit D. Except as otherwise expressly admitted, defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10, and, placing their denial on that ground, deny each and every such allegation.

8. In answer to the allegations of paragraph 11, defendants admit said allegations.

9. In answer to the allegations of paragraph 12, defendants admit that plaintiffs have declined to sign applications for membership in BRAC, that plaintiffs have paid agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues, and that plaintiffs Balian, Dean, Payne, Fontaine, and Loudin continue to pay agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues. Defendants deny that plaintiffs Ellis and Sauls continue to pay the agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues. In answer to the allegations of the second sentence of paragraph 12, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and, placing their denial on that ground, deny each and every such allegation.

10. In answer to the allegations of paragraph 13, defendants admit that plaintiffs Balian, Sauls, Dean, Payne, and Fontaine have mailed letters to BRAC substantially in the form quoted in paragraph 13. Except as

otherwise expressly admitted, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and, placing their denial on that ground, deny each and every such allegation.

COUNT I

11. In answer to the allegations incorporated by reference in paragraph 14, defendants incorporate herein by reference each and every admission, denial and allegation of paragraphs 1 through 10 above.

12. In answer to the allegations of paragraph 15, defendants admit that dues and fees monies have been used in part for the activities described in sub-paragraph (c). Except as otherwise specifically admitted, defendants deny each and every allegation contained in paragraph 15.

13. In answer to the allegations of paragraph 16, defendants deny each and every such allegation.

14. In answer to the allegations of paragraph 17, defendants admit that the Railway Labor Act authorizes the designation of BRAC as exclusive bargaining agent for all employees in the collective bargaining unit in which plaintiffs are employed and empowers BRAC and Western to enter into the form of union security agreement described in paragraphs 7 and 8 of the complaint. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 17.

COUNT II

15. In answer to the allegations incorporated by reference in paragraph 18, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 10 and 12 through 14 above.

16. In answer to the allegations of paragraph 19, defendants admit that, as the statutory exclusive bargaining representative of plaintiffs, BRAC owes each of them the fiduciary duty of fair representation. Except as otherwise expressly admitted, defendants deny each and every

allegation contained in paragraph 19.

COUNT III

17. In answer to the allegations incorporated in paragraph 20, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 10, 12 through 14 and 16 above.

18. In answer to the allegations of paragraph 21, defendants admit said allegations.

19. In answer to the allegations of paragraph 22, defendants deny each and every such allegation.

20. In answer to the allegations of paragraph 23, defendants admit that the dues reduction procedure set forth in paragraph 21 provides for no reduction of the initiation fees, that Article 27, Section 4(a) of the BRAC constitution provides that three and one-third cents per month from each member's dues shall be applied to the Legislative Fund Account (Grand Lodge), and that Article 23, Section 4(b) of the BRAC constitution authorizes each State Legislative Committee to levy against each member in the state a levy of not less than thirty cents per month for the transaction of its business, and that this amount is paid from each member's monthly dues. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 23.

21. In answer to the allegations of the Conclusion, defendants deny each and every such allegation.

AS AND FOR THEIR FIRST AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

22. The Complaint fails to state a claim upon which relief can be granted in Count I, Count II, or Count III, or any of them.

AS AND FOR THEIR SECOND AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

23. Plaintiffs have failed to attempt to exhaust internal and administrative remedies available to them.

AS AND FOR THEIR THIRD AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

24. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 337, subdivision (1).

AS AND FOR THEIR FOURTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

25. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 338, subdivision (1).

AS AND FOR THEIR FIFTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

26. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 343.

AS AND FOR THEIR SIXTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

27. Insofar as the Complaint and Counts I, II, and III, and each of them, allege a claim arising out of the interpretation or application of the collective bargaining agreement between BRAC and Western Air Lines, said Complaint and Counts I, II, III, and each of them, are preempted by the provisions of the Railway Labor Act, 45 U.S.C., Section 184, and within the exclusive jurisdiction of the System Board of Adjustment.

WHEREFORE, defendants pray:

(1) That plaintiffs, and each of them, take nothing by their action;

(2) For costs of suit incurred herein; and

(3) For such other and further relief as the Court deems just and proper.

BODLE, FOGEL, JULBER, REINHARDT and ROTHSCHILD
GEORGE E. BODLE
STEPHEN REINHARDT
JOEL N. KLEVENS

HIGHSAW and MAHONEY
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By
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

HOWARD ELLIS, et al. Plaintiffs, v. BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, etc., et al. Defendants.	Civil No. 73-113-N AMENDMENT TO COMPLAINT

Plaintiffs hereby move to amend their complaint herein as follows:

Count IV

24. Plaintiffs reiterate and reallege all of the allegations of Paragraphs 1 through 13, 15 through 17, 19, and 21 through 23.

25. At its quadrennial convention in 1967, Defendant BRAC first adopted an ostensible dues reduction procedure, by means of a constitutional amendment. That constitutional amendment is attached hereto, marked Exhibit F, and incorporated herein by reference.

26. At its quadrennial convention in 1971, Defendant BRAC revised that dues reduction procedure, again by means of a constitutional amendment, which is attached hereto, marked Exhibit G, and incorporated herein by reference. As revised, that provision is attached hereto, marked Exhibit H, and incorporated herein by reference.

27. Under Article 34, Section 1 of the BRAC Constitution, a constitutional amendment may be accomplished only at a convention, or by a referendum.

28. Flouting the requirements imposed by the constitution of the BRAC, its International President issued a Policy Statement (attached hereto, marked Exhibit I and made a part hereof by reference) which is in fact an amendment of the BRAC Constitution by executive fiat. Such action is specifically forbidden by numerous portions of the constitution, including the following:

> Article 13, detailing the International President's duties, specifies in Section 2 that he shall ". . . *enforce strict observance of the constitution*, laws, rules and regulations of the Brotherhood."
>
> Article 13, Section 3 emphasizes this duty, providing that the International President ". . . shall at all times strictly enforce the Grand Lodge Constitution, Statutes, for the Government of Lodges, Protective Laws and T. C. Division By-Laws of the Brotherhood and shall call to account any member or members of the Brotherhood violating the same."
>
> Article 13, Section 4 authorizes the International President to interpret the Constitution and laws, but limits this authority by stating that he may ". . . issue dispensation not *inconsistent with said Constitution* and laws."
>
> Article 5, Section 2 (a) provides that: "It is the obligation and responsibility of every officer, subordinate unit and member to comply with the Constitution, . . . and the orders of its proper officers *when in conformity therewith*; . . . ."
> (Emphasis supplied in the foregoing quotations).

29. The action undertaken in issuance of the Policy Statement was motivated by a fraudulent, deceitful and dishonest attempt to accomplish two objectives: (1) to conceal the nature and extent of BRAC's actual expenditure of the plaintiffs' compulsory union dues and fees, and (2) to enmesh the plaintiffs in an illusory scheme to bilk them of their right not to pay dues and fees for purposes unrelated to the negotiation and administration of collective bargaining agreements, or for the settlement of disputes and grievances.

30. One indication of defendants' motives, as evidenced in the International President's issuance of the Policy Statement, appears in the fact that plaintiffs propounded interrogatories on January 21, 1974 which sought details on defendants' spending of dues and fees; on January 24, 1974 the Policy Statement was issued with a retroactive effective date, and officers and representatives of defendants were told by International President Dennis that "It is imperative that prompt action be taken on this matter. . . ;" and that "This matter should take precedence over any other duty you may hve. . . ." These instructions are contained in letters to his subordinate officers.

31. The Policy Statement is inconsistent with the constitutional provisions of Article 27 (Exhibit H), and therefore is an invalid exercise, for many reasons, including but not limited to the amount of dues reduction, the procedure whereby it may be obtained, the persons authorized by BRAC to administer it, and the categories of employees represented by the union to whom it is applicable.

32. On its face, and in its operation and effect as described by International President Dennis, the Policy Statement is arbitrary, capricious, deceptive and invidiously discriminatory for the following reasons:

A. It applies to only a limited portion of defendants' improper expenditures of plaintiffs' dues and fees.

B. On its face, it does not encompass payments plaintiffs are compelled to make in the form of initiation fees and assessments.

C. It discriminates against all members and agency fee payers who decline to execute a checkoff, in that no method is specified as to how or when they are supposed to be able to obtain a refund; and International President Dennis has stated that such procedures are not yet established, and further that they will vary from one

Local Lodge and employee group to another, depending upon the arrangements he makes with the Local Lodge officers, the form of the collective bargaining agreement under which the affected employees work, and other factors.

D. Objectors are not provided with any means to secure information by which they may refute or authenticate the determination by various BRAC officials of the amount of political spending, or other data pertinent to the operation of the Policy Statement; and International President Dennis has stated that BRAC will refuse to provide such information, even on the various levels of appeals specified.

E. The initial determination of the amount of improper spending and the review thereof at the first two appellate levels is made by those persons having a vested interest in computing it at a minimum level; those same persons actively participate in the selection of recipients and beneficiaries of improper expenditures from plaintiffs' dues and fees.

F. The International President has demonstrated hostility toward members and agency payers exercising their right to become objectors. Further, he cannot serve an impartial appellate function as he has stated that he does and will work closely with the Board of Trustees in making their initial dues reduction computation. Further, he has a conflict of interest in serving in an appellate capacity or in any way affecting the dues reduction determinations, as he is President of the Railway Clerks Political League, a political organization which is the recipient or beneficiary of a substantial amount of contributions, services, supplies, and equipment from BRAC, for which the payment or cost thereof is derived at least in part from objectors' (including plaintiffs') compulsory dues and fees. The International President therefore has a vested interest in ensuring that such contributions and services are provided at a maximum level. This conflict is intensified by the fact that 6 of the 7 members of the Railway Clerks Political League Executive Committee are members of the BRAC Executive Council, which is the second step appellate forum.

G. At the final appellate level, those persons serving the Appeals Committee of the convention are appointed by BRAC's International President, (who decided step one of the appeal) with the ratification of the convention.

H. There is no way to determine the amount of time plaintiffs would be required to expend in pursuit of the illusory appellate procedures, as:
   (1) no time limitations are provided in the Policy Statement,
   (2) even if other appeal procedures set forth in the constitution were followed, there is no time limit within which the International President or the Executive Council must render a decision.
   (3) conventions are scheduled four years apart.

I. Plaintiffs may not be represented on appeal by an attorney, unless such an attorney is a BRAC member, and International President Dennis has revealed that there are only approximately 15-25 of such attorneys in the entire United States who do not serve in a representative capacity for the union, which has approximately 200,000 members in the United States.

J. There are no procedural rules or provisions applicable to establish how they may accomplish an appeal under the Policy Statement, or specifying how they may present such an appeal. The only provisions which might govern such matters are set forth in the BRAC Constitution, and they are limited to those who have executed applications for membership.

K. The Policy Statement intentionally imposes burdensome and illogical conditions upon potential objectors to chill their exercise of their right to object to improper use of their compulsory dues and fees, and to cause those who do object to suffer a net economic loss:
   (1) Although BRAC is making known the very existence of the Policy Statement by its newspaper (second class mail) and by regular mail in some cases, objectors must incur the expense of mailing their objection by registered or certified mail.
   (2) Objectors must bear the expense of making an individual notification of their objection.
   (3) Those who have in the past objected, and defendants concede having received objections from some plaintiffs and others, must send a new request via certified or registered mail in order to validate their prior objection.
   (4) Defendants require objectors to make an annual renewal of their objection, by certified or registered mail.

(5) While the Policy Statement purports to grant prior objectors 90 days within which they must renew their objections, that period begins from the effective date, January 1, 1974. The Policy Statement was not issued until January 24, 1974, notification to agency fee payers was not initiated until February 14, 1974 or later, and notification to members through the union newspaper was not begun until February 27, 1974. Thus the vast number of persons subject to the Policy Statement will have less than 30 days notice, rather than the 90 days.

L. In order to present an appeal, the objector must travel to Chicago, Illinois, headquarters of the International President, and to whatever distant city has been selected for an Executive Council meeting or a convention. All expenses incurred by the objector, including attorneys' fees (in the unlikely event he found a BRAC member-attorney willing to represent him, and acceptable to the objector), travel expenses, and costs incurred in establishing his evidence of the improper determination below must be borne by the objector, even if he succeeds in his appeal.

M. The Policy Statement invidiously discriminates against agency payers by permitting members only to object within their first 30 days of membership. Agency payers' objections are not deemed timely until the first 30 days of the calendar year following the inception of the compulsory union dues and fees payments.

33. Issuance of the Policy Statement is the latest example of defendants' continuing bad faith effort to oppress employees they represent, and to stifle them in the exercise of rights guaranteed them in the First, Fifth and Ninth Amendments to the United States Constitution and by the Railway Labor Act, 45 U.S.C. § 151 *et seq*. Those rights preclude defendants from compelling plaintiffs to pay dues and fees for purposes other than the negotiation and administration of collective bargaining agreements, and for the adjustment and settlement of grievances and disputes.

34. Defendants' bad faith is further exemplified by the pendency of the within action for approximately one year, during which time defendants have continued their steadfast refusal to refund dues and fees improperly spent over plaintiffs' objection.

35. Irreparable harm, damage, and injury will be done to plaintiffs unless defendants are enjoined and restrained from subjecting plaintiffs to the provisions of the Policy Statement, as they will be denied their constitutional and statutory rights as above described. Plaintiffs have no adequate remedy at law for the harm, damage, and injury suffered as a consequence of the acts and conduct of defendants.

WHEREFORE, plaintiffs pray:

1. For an order determining that the adoption of the Policy Statement was invalid, and is void and of no effect;

2. That the Court enjoin and restrain defendants from subjecting plaintiffs and others represented by BRAC to the Policy Statement;

3. For an order releasing objectors from any obligation to paydues, fees, or assessments to defendants or any subordinate or affiliated organizations as a condition of employment;

4. For a judgment allowing plaintiffs and the class they represent monetary damages for injuries sustained as a result of defendants' unlawful and unwarranted interference with and deprivation of their constitutional, civil, statutory and contractual rights.

5. For attorneys' fees, costs, and for such other and further relief as the Court may deem just and proper.

MICHAEL E. MERRILL
RAYMOND J. LAJEUNESSE, JR.
The National Right to Work
Legal Defense Foundation, Inc.

JONATHAN C. GIBSON
Gibson & Kennerson

JOHN L. KILCULLEN
Webster & Kilcullen

By
Michael E. Merrill

Attorneys for Plaintiffs

(Proof of service omitted in printing.)

EXHIBIT F

EXCERPTS FROM THE PROCEEDINGS OF THE 23RD REGULAR AND 9TH QUADRENNIAL CONVENTION OF THE BRAC, MAY 1967

* * *

One additional point we wish to bring out before reading the report of the committee is that we have now made a provision in respect to dues for associate members who are classified as members who retire because of age and perform no compensated service in industry over which the Brotherhood claims jurisdiction. Such members' dues would be the voluntary payment of one dollar ($1.00) per month. A retired member's interest changes from that of an active service employe, his main gains are achieved through legislative changes, rather than collective bargaining. It is, therefore, just and proper that a portion of his dues be earmarked for political activities. We have been advised that in view of the voluntary payment of these dues the procedure we are recommending in this area fully complies with applicable Federal law.

You will also note that we have added a section that permits a full dues paying member who does not desire to contribute to the legislative fund account to reduce his dues by 2c per month. This recommendation is being offered as a result of court litigation involving union shop contracts and the decisions rendered in the involved cases raises some doubt as to the use of union funds for political-legislative purposes against the wishes of a member. For this reason, our financial officers have calculated that approximately 2c per member per month is used for these purposes. Therefore, we have provided that these members have opportunity to not participate in this area to this limited extent. It is inconceivable to this committee that a member would not desire to participate in this very important function of our Brotherhood. However, the avenue of nonparticipation will now be available if a member insists.

Since your committee prepared its report, additional resolutions involving dues have been submitted. These resolutions are herewith listed by number—543, 545, 551, 552, 553, 562, 563, 570 and 574. Your committee has reviewed these resolutions and feels that the statements previously made in this report need not be changed nor its proposals altered.

Attention is directed to change in system board per capita tax which also would be reflected in Article 1, Section 15 (a), pages 106 and 107 of

the Protective Laws. Your committee will make the appropriate changes when codifying the laws after the convention.

For the delegates' information, you have heard the report of the Finance Committee just recently in regard to the Grand Lodge assuming the full cost for LABOR newspaper, and we are just bringing that to your attention at this time.

Your Committee on Grand Lodge Constitution and Laws proposes to amend Article 27, Section 2 (a), Section 4 (d) appearing on pages 60, 61, 62, and 63 of the Constitution of the Grand Lodge as follows:

PROPOSED CHANGES

Fees and Dues

Section 2 (a) Effective July 1, 1967, all full dues established by the 1963 Convention, or by other provisions of the Constitution and laws of the Brotherhood applicable to all members under the jurisdiction of each board of adjustment, shall be increased one dollar ($1.00) per member per month, except that no full dues shall be less than five dollars and fifty cents ($5.50) per member per month.

There shall be two kinds of dues applicable to members of the Brotherhood. Full dues shall be not less than five dollars and fifty cents ($5.50) per member per month, of which a minimum of one dollar and thirty cents ($1.30) per member per month shall be retained for state legislative tax and the use of the use of the lodge; retention of membership dues which shall be one dollar ($1.00) per member per month, of which twenty-five cents (25c) shall be retained for the use of the lodge. Full dues shall apply to each member who received pay for forty (40) hours or more in any calendar month on a position in industry over which the Brotherhood claims jurisdiction, or the equivalent compensation under any agreement between an employer and the Brotherhood; to a member promoted to excepted or official positions and a member taking a voluntary leave of absence requiring approval of the organization. Each board of adjustment is authorized to fix uniform dues (above the minimum of five dollars and fifty cents ($5.50) per member per month) to apply to all members under the jurisdiction of the board, provided such dues shall be sufficient to meet Grand Lodge per capita tax, lawfully approved board of adjustment per capita tax and State Legislative Committee per capita

tax, subject to the approval of the International President.

Retention of membership dues shall apply to a member who performs no service in a calendar month due to reduction in force, furlough, military service, sickness, disability, resignation, and a member who receives pay for less than forty (40) hours in any calendar month on a position in industry over which the Brotherhood claims jurisdiction; and a member working in another craft in the industry where he is required to join another union under a union shop agreement.

Members who have retired because of age and who perform no compensated service on a position in industry over which the Brotherhood claims jurisdiction will be classified as associate members, with full rights to participate in the Death Benefit Department, if qualified, receipt of "The Railway Clerk," with right to attend lodge meetings of the Brotherhood, except they shall have no vote in the election of officers, or on matters pertaining to wages, rules, working conditions or grievances, and they may retain such membership by the voluntary payment of one dollar ($1.00) per month.

PROPOSED CHANGES

That Article 27, Section 4 (a) be amended to read as follows:

Per Capita Tax

Section 4 (a) Grand Lodge per capita tax shall be two dollars and ten cents ($2.10) per month or six dollars and thirty cents ($6.30) per quarter on full dues paying members, except that no per capita tax is payable on new or reinstated members for the quarter in which they apply for membership; seventy-five cents (75c) per month or two dollars and twenty-five cents ($2.25) per quarter on reduced dues paying members and shall be apportioned quarterly by the International Secretary-Treasurer to the different funds and fund accounts as follows:

Per Capita Tax on Full Dues Paying Members

General Fund Account (Grand Lodge) $3.45

Protective Fund Account (Grand Lodge) ..... .45

Convention Fund Account (Grand Lodge) ..... .24

Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
Organization Fund Account (Grand Lodge)	.30
*Legislative Fund Account (Grand Lodge)	.06
Total	$6.30

*Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced two cents (2c) per month by notifying the lodge secretary in writing and paying his dues directly to the lodge secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of notice.

Retention of Membership Per Capita Tax

General Fund Account (Grand Lodge)	$ .15
Convention Fund Account (Grand Lodge)	.24
Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
*Legislative Fund Account (Grand Lodge)	.06
Total	$2.25

*Any member who does not desire to contribute to the legislative fund Account may have his dues reduced two cents (2c) per month, by notifying the lodge secretary in writing and paying his dues direct to the lodge secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of notice.

Associate Membership Per Capita Tax

General Fund Account (Grand Lodge)	$ .00
Convention Fund Account (Grand Lodge)	.00

Death Benefit Fund (Grand Lodge) 1.20

Official Publication Fund Account (Grand Lodge) ..... .60

*Railway Clerks Political League ..... .45

Total $2.25

*Any associate member who does not desire to make a voluntary contribution to Railway Clerks Political League may have his dues reduced 15c per month by notifying the lodge secretary in writing and making his payment direct to the lodge secretary. Reduction in dues will become effective with the month following the month in which the associate member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of the notice.

NOTE: An associate member is a member who has retired because of age and who performs no compensated service on a position in industry over which the Brotherhood claims jurisdiction, and per capita tax received on him is only allocated to those funds in which he has an interest or from which he receives service. The purpose of the voluntary contribution to Railway Clerks Political League is to advance and protect his interest through political activity in the legislative field and in particular to work for improvement of retirement systems established and maintained under law.

That Article 27, Section 4 (d) be amended to read as follows:

Board of Adjustment Per Capita Tax

(d) Board of Adjustment per capita tax shall be not less than two dollars and ten cents ($2.10) per member per month.

Mr. Chairman, I move adoption of the committee's report.

DELEGATE DEE: I second the motion.

GRAND PRESIDENT DENNIS: You have heard the committee's report. What is your pleasure?

The delegate at Mike 4.

DELEGATE JOHN J. CIRUCCI (Lodge 662): I would like to have a point of privilege. It is not spelled out what secretary collects the dues. Is that the recording secretary or is it the financial secretary?

GRAND PRESIDENT DENNIS: I can't hear you, brother.

DELEGATE BARFIELD (Lodge 1157): Mr. Chairman and delegates to the Convention: I rise in opposition to the committee's report as it is now written because it proposes to increase—not because it proposes to increase the dues, but because the proposed increase is too small. It is entirely insufficient in that it fails to provide the proper financial relief to the local lodges. As all of you know, the membership of the local lodges has declined steadily for the past several years, and all present indications point to a continued decline for some time to come. This reduction in membership has not resulted in a corresponding decrease in the work and duties to be performed by the local lodge officers. Rather, the officeres are now confronted with complex problems never dreamed of several years ago, such as computers, and with the policing of such agreements as the Union Shop Agreement and the February 7, 1965 Stabilization of Employment Agreement. The vast majority of the local lodge officers receive salaries which were fixed years ago and which even at that time were not commensurate with the responsibilities and duties required of them.

Instead of the salaries of the local lodge officers being adjusted periodically in proportion to the general wage increases applicable to the members we represent and in proportion to the salary increases voted for the system board officers and the Grand Lodge officers, it has been necessary in many cases to reduce the already inadequate amounts paid to the lodge officers. These reductions have been due solely to the loss of revenue resulting from the shrinkage of Class 1 membership.

Many of the lodges I represent have received communications from the Grand Lodge directing them to reduce expenses. In most of these cases, the directives can be complied with only by reducing the ridiculously low salaries of the local lodge officers. Other lodge expenses have also risen, just as the Grand Lodge and system boards' expenses have risen.

The increase proposed by the Committee on Laws would in the case of a lodge with one hundred Class 1 members amount to only $10 per month. Why not get what we need now? It will be four years before we

have another convention. Also by taking action at this time, we can eliminate the necessity of attempting to effect the dues increase through the individual system boards of adjustment.

Therefore, I move that the motion now before the convention be amended to provide for an increase in dues of $1.50 per month, with minimum dues of $6.00 per month with a 50c per month increase in the Grand Lodge per capita tax, a 50c per month increase in the system boards' per capita tax, and a 50c per month increase in the amount retained by the lodges for their use.

Thank you.

DELEGATE C. M. ENGLADE (Lodge 118): I second the amendment to the motion. (Applause)

GRAND PRESIDENT DENNIS: All right. You heard the amendment, and it is seconded, which as I understand it would establish a six dollars minimum dues instead of a five dollar and fifty cents minimum as proposed by the committee, with 50c going to the Grand Lodge, 50c to the system board, and 50c to the local lodge.

The delegate at Mike 2.

DELEGATE CHARLES H. PURKISS (Lodge 182): I am secretary-treasurer of the California State Legislative Committee. I got a little bit thinned out on the funds for increasing for our state legislative per capita. In trying to look ahead for four years with, I think, the increasing amount of political action we are going to have to take, coupled with the fact that California is a long state, being some twelve hundred miles in length, I would like to, if it is legally possible, amend the good brother's amendment by making that portion 40c to the local lodge and 10c to the state legislative committees.

. . . Cries of "No" . . .

GRAND PRESIDENT DENNIS: Is there a second to that amendment? It has to have a second on the amendment.

DELEGATE LESLIE A. CRAVER (Lodge 45): Mr. Chairman, I second that amendment.

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EXHIBIT G

EXCERPTS FROM THE PROCEEDINGS OF THE 23RD REGULAR AND 9TH QUADRENNIAL OF THE BRAC, MAY 1967

* * *

What is your pleasure?

. . . The question was called . . .

Those in favor raise your right hand; down hands; those opposed; the report is adopted.

The Laws Committee is ready to continue with their report, and we will now hear from the Laws Committee. Brother Geral Toppen and Brother Arch Fitzjarrell will report.

DELGATE TOPPEN: We ask that you turn to pge 13 of the Committee's report.

I would like to make these comments before setting out the final deliberation, or teh deliberations of the Laws Committee after this afternoon's session was recessed.

Your Committee considered approximately 10 proposals that were presented in writing. These written documents did not object to an increase in dues; however, there was an indication that the delegates did not desire to increase the dues quite as much as originally proposed by the Committee.

The basic thrust of the written documents was to the distribution of the dues increase.

It was further apparent that the objections were raised to the Committee's report with respect to the step rate increase of dues.

It was your Committee's understanding at the conclusion of the afternoon session that we were to take all of the written documents submitted by the delegates at this Convention and analyze same without regard to whether or not this Convention's rules were complied with in submitting amendments to a committee report; this we did. No suggestion was discarded on parliamentary procedure handling; all were considered.

Your Committee attempted to arrive at a consensus of opinion of the delegates through a review of the suggestions made. Frankly, it is our desire to hit a happy medium. It would be impossible, however, to satisfy everyone in this respect, and we hope that the delegates put aside their

individual problems so as to permit this Convention to find a harmonious solution to a very difficult and vexing problem.

With respect to your Committee's report, appearing on page 13, your Committee proposes to change its recommendations on initiation and reinstatement fees by changing the allocation of funds to give the Grand Lodge $10.00; the System Board $10.00; and the Local $10.00, out of each initiation fee. That is right down the line, 10, 10, and 10.

The Committee proposes to change its report to give the Grand Lodge $20.00; the System Board $10.00; and the Local Lodge $15.00 out of each reinstatement fee.

Page 13 of the Committee's report would be corrected accordingly. You will notice there where it says, "The Grand Lodge shall receive fifteen" — change that to "ten"; and where it says "of each initiation fee and twenty-five dollars", you would change that to read "twenty".

With respect to the Grand Lodge, they would be getting five dollars less, so that initiation fee — General Fund Account for the Grand Lodge would be changed from $11.25 to $6.25; and reinstatement fee to Grand Lodge, General Fund, instead of being $21.25 would read $16.25.

And then, at the bottom there, the Board of Adjustmen [*sic*] shall receive $10.00 from each initiation or reinstatement fee, the remainder to be retained by the Local Lodge. So you can make that $8.00 read $10.00, and then from each initiation and reinstatement fee the remainder to be retained by the Local Lodge. Do you have those corrections?

Also, a paragraph would be added to provide that any subordinate unit that desires to establish an initiation fee or reinstatement fee above the $30.00 and $45.00 amount recommended by the Committee shall be permitted to do so if a majority of the members of said unit and the International President approve same.

On page 14, I will read the sections. Section 2(a). This is what your Committee proposes. "Effective July 1, 1971, all full dues established by the 1967 Convention or by other provisions of the Constitution and Laws of the Brotherhood applicable to all members under the jurisdiction of each Board of Adjustment and System Division, shall be increased $5.50 per member per month, except that no full dues shall be less than $11.00 per member per month."

Now, we would take out the second paragraph completely. It would be just a one step deal. That "Effective July 1, 1973" can be scratched, that whole paragraph there that is underlined.

Then it would read, the next paragraph: "There shall be two kinds of dues applicable to members of the Brotherhood. Effective July 1, 1971 full dues shall be not less than $11.00 per member per month, of which a minimum of $2.00 per member per month shall be retained for State Legislative tax and the use of the lodge."

Then you could scratch out "Effective July 1, 1973" because there would be no dues increase July 1, '73. So start scratching out "Effective July 1, 1973." The next full line; the third full line; the fourth full line; the fifth full line; where "the lodge" is on the sixth line, before the semicolon. The rest there, there would be no change. That is the retention of membership provision.

On page 15, that $10.00 would be changed to $11.00. That would be a minimum of $11.00 per member per month effective July 1, 1971; the balance of that line and up to July 1, 1971, line 3 to be scratched. That would be the change on page 15.

On page 16: "That Article 27, Section 4(a) be amended to read as follows:

"Effective July 1, 1971 Grand Lodge per capita tax shall be $4.20 per member per month or $12.60 per quarter." So that $4.00 would be $4.20, and the $12.00 would be $12.60.

And in connection with that, the per capita tax on full dues paying members, the General Fund Account of the Grand Lodge would be changed from $7.50 to $8.10. And the total at the bottom would be changed from $12.00 to $12.60.

Page 17. Those first two paragraphs on page 17, starting with "Effective July 1, 1973," all the way down to where the asterisk appears, would be scratched out because there would be no second dues increase.

Then you can turn to page 19, if you will please. That would read, "Effective July 1, 1971 Board of Adjustment and System Division per capita tax shall be not less than $4.20 per member per month." The rest of that paragraph would be scratched out.

Now, basically, in the allocations and in this increase, it would give each unit of the Brotherhood the same proportionate amount.

Mr. Chairman, I move adoption of the Committee's report as amended.

DELEGATE FITZJARRELL: I second the motion.

INTERNATIONAL PRESIDENT DENNIS: As I understand it, the $2.10 out of the present minimum dues of $5.50 to the Grand Lodge would become $4.20. The $2.10 to the System Board would become $4.20. And the $1.30 to the Local Lodge would become $2.60, or a 100 percent increase across the board, making a total of $11.00, and it would be a one step proposition.

Mike 2.

DELEGATE WILLIAM H. McCARTHY (Lodge 1298): I think this is in order. I move that we divide the question, and debate and vote on each section of the amended Article 27 separately.

DELEGATE DAVID C. TRAYNOR (Lodge 361): I second the motion.

INTERNATIONAL PRESIDENT DENNIS: Well, I think that the initiation fee and the reinstatement is divisible. I mean that is separate and apart, but when we get into the dues, I do not think we can divide that section by section. It has to be a total package.

We can handle the initiation and the reinstatement fee separately, and take a vote on that question. That was ten, ten and ten on the initiation, and twenty, ten and fifteen for the local lodge on the reinstatement.

Now, is it the desire of the Covention [*sic*] to divide the question and handle the initiation and reinstatement fee separately from the dues question? Is that the desire?

. . . Cries of "No" . . .

INTERNATIONAL PRESIDENT DENNIS: Those in favor of dividing the total question, handle the initiation and the reinstatement

fee separately, those in favor of doing that please raise your right hands. Down hands. Those opposed.

Well, I think the question will be divided. We will take a vote on the initiation fee and reinstatement fee part of the committee's report which pertains to the initiation fee and reinstatement fee—I am trying to explain this first, and then I will give you the mike.

The initiation fee would be divided $10 to the Grand Lodge, $10 to the System Board, and $10 to the Local Lodge. A reinstatement fee would be $20 to the Grand Lodge, $10 to the System Board, and $15 to the Local Lodge.

That is the question. Mike 2.

DELEGATE ROBERT J. CRANCH (Lodge 8007): President Dennis, in respect to—a point of information—in respect to the $30 initiation fee that is facing us now, we do not have a closed shop in Canada. We have a check-off of Union dues.

The question that I am asking is this: Would it be possible for the System Division to collect the monthly dues until such time as the monthly dues accumulated becomes the initiation fee and then it would be simply to sign the member up as a member, or would it have to be a cash payment of $30?

INTERNATIONAL PRESIDENT DENNIS: Brother Cranch, I think I can alleviate the problem. We recognize that there is a difference, that you have a different kind of an arrangement in Canada. And there would be no requirement—there is no requirement now for an initiation fee, right?

DELEGATE CRANCH: Right.

INTERNATIONAL PRESIDENT DENNIS: That policy would continue.

DELEGATE CRANCH: I am sorry.

INTERNATIONAL PRESIDENT DENNIS: It is all right.

DELEGATE CRANCH: Right now the member must pay an initiation fee of $10. The question that I am asking is, is the accumulation of

the union check-off, as an example, if the dues were $10.00 a month times three, he could not join until he had three months dues deductions. He could not join until the fourth month.

INTERNATIONAL PRESIDENT DENNIS: Well, let me find out what the practice in Canada is at the present time.

INTERNATIONAL VICE PRESIDENT McGREGOR: Brother Cranch, as I understand it, you are talking about Canadian Pacific Airlines?

DELEGATE CRANCH: Principally, Bill, yes.

INTERNATIONAL VICE PRESIDENT McGREGOR: Where you presently do pay an initiation fee?

DELEGATE CRANCH: They pay it out of their pocket.

INTERNATIONAL VICE PRESIDENT McGREGOR: They pay it out of their pocket? Well, that is not what Brother Dennis was talking about, International President Dennis. That is different from what we have on the rail, where your monthly dues, as collected by the modified Rand formula until you have paid sufficient to pay your initiation fee is considered to be your initiation fee.

DELEGATE CRANCH: There is a correction, Bill, on CN Rail they too pay $10 out of their pocket in order to become a member.

. . . Cries of "No" . . .

INTERNATIONAL PRESIDENT DENNIS: Well, let me put it this way. If the Canadian lodges and Canadian membership have any problem on this initiation fee, I am sure that Brother McGregor can work it out with the General Chairman along with Brother Dick Smith and there will be no problems.

DELEGATE CRANCH: Fine, I have my answer from a GS and T of the BRAC organization. I am satisfied now.

INTERNATIONAL PRESIDENT DENNIS: Okay. Mike 3.

DELEGATE HERSHELL L. OLIVER (Lodge 1913): I move that we adopt the Committee's report.

DELEGATE OSCAR DERDERIAN, SR. (Lodge 106): I second the motion.

INTERNATIONAL PRESIDENT DENNIS: Now are you talking about the divided report, or the whole report? You are talking about the initiation fee and reinstatement, right?

DELEGATE OLIVER: Right.

INTERNATIONAL PRESIDENT DENNIS: That is what we have before the house.

DELEGATE OLIVER: Right.

INTERNATIONAL PRESIDENT DENNIS: All right.

DELEGATE WILLIAM T. GALLAHER (Lodge 2100): Mr. Chairman, a point of personal privilege, please.

. . . Cries of "Oh" . . .

INTERNATIONAL PRESIDENT DENNIS: Brother Gallagher, I have recognized you, you know, for quite a few times, and if every delegate got up for personal privilege as frequently as you have we would be here for quite awhile. (Applause and whistles)

I hate to do this, but we are on this question now. Let us get to the bottom of this question, and then later on the point of personal privilege should not be recognized for a statement at this time. We are discussing this issue. Unless it is on this question, either for or against, I have to deny you the right to speak at this time. (Applause)

All right, are you ready to vote?

. . . The question was called . . .

INTERNATIONAL PRESIDENT DENNIS: Those in favor of the committee's amended report, that the initiation fee and reinstatement fee be amended to provide that—reinstatement and fees by changing the

allocation to give the Grand Lodge $10, the System Board $10, and the Local Lodge $10, out of each initiation fee. The Committee proposes to change its report to give the Grand Lodge $20, the System Board $10, and the Local Lodge $15 out of each reinstatement fee.

Then also that any subordinate unit desiring to increase the initiation fee or reinstatement fee above the $30 or $45 recommended by the Committee shall be permitted to do so if a majority of the members of said unit and the International President approves same.

Now, that is what we are voting on. Those in favor please raise your right hands. Down hands. Those opposed.

That portion of the Committe's [*sic*] report is adopted. (Applause) In excess of a two-thirds vote.

Now the question of dues is in the balance of the report. The Committee's report is that the second step be eliminated. The $12 step be eliminated, and we have a dues of $11; that the present minimum of $5.50 become $11.00; and that the Grand Lodge portion, which is $2.10 become $4.20, the System Board portion, which is $2.10 become $4.20; and the local lodge portion which is $1.30 become $2.60. A complete equal distribution across the board.

Then the distribution of the funds are as detailed by the Chairman of the Laws Committee.

That is the question before us now. Mike 2.

DELEGATE T. B. GOODWIN (Lodge 8043): Brother Dennis, before I made a motion that the Canadian delegation—that the President—my amendment to the motion was that the present Grand Division portion of the per capita tax not be changed for the Canadian membership at this time.

I feel that it is only right to explain to the sisters and brothers from the States why I made this amendment.

First, I wish to state that we are not opposed to an increase in dues. We in Canada are not afraid to face our membership because we too have made good gains, and we want to carry our weight.

However, for the United States brothers and sisters, I would like to state what we are up against north of the border.

In Canada we have two major railways, the Canadian Pacific, which is represented by BRAC. BRAC only represents the TC employees on the Canadian National. The balance of clerks are represented by a National Union, the Canadian Brotherhood of Railway Transport and General Workers. Their dues are $5.50 per month. You are now asking us to increase our dues to $11.00, double theirs for the same representation.

When we negotiate in Canada, we. . . .

* * * *

. . . their specific problems. So now we will vote on the previous question.

The previous question is the amendment made by the Brother from Roanoke, and that amendment that he made reads as follows: "That Article 27, Section 2, be amended to read as follows: Section 2(a) —"

I have to put the question to see if the majority want the previous question. My parliamentarian here so advises me. Those in favor of moving the previous question please vote by raising your right hands. Down hands. Those opposed.

We will now vote on the previous question. The previous question that was brought up was the amendment made by the Delegate from Roanoke, which reads as follows. It was an amendment to the Committee's revised report. "Section 2(a). Effective July 1, 1971, all full dues established by the 1967 Convention, or by other provisions of the Constitution and Laws of the Brotherhood applicable to all members under the jurisdiction of each Board of Adjustment and System Division shall be increased $2.50 per member per month, except that no full dues shal [*sic*] be less than $8.00 per member per month.

"Effective July 1, 1973, all full dues established by the 1971 Convention or by other provisions of the Constitution and Laws of the Brotherhood applicable to all members under the jurisdiction of each Board of Adjustment and System Division shal [*sic*] be increased $2.00 per member per month, except that no full dues shall be less than $10.00 per member per month, and distribution of dues proportionately."

This is submitted by the Delegate from Lodge 1385, Roanoke, Virginia. I don't have that Delegate's name, but I guess it is in the record.

Now, that was the amendment from the floor to the Committee's report. We will first vote on that amendment. And then if that amendment carries, we will vote on the total report as amended. If it loses, we will then vote on the Committee's report. Is that clear? So you are now voting on the amendment of the Delegate who submitted if from the floor.

Those in favor of the amendment from the floor please raise your right hands. Down hands. Those opposed. The amendment is lost.

We will now vote on the Committee's report, and the Committee's report was that the dues shall be $11.00 and the Grand Lodge portion would be $4.20 a month; the System Board portion $4.20; and the Local Lodge portion $2.60, with the understanding as I stated previously, any General Chairman who thinks he does not need that much money can write in and get forgiveness from the International President.

Are you ready to vote?

. . . Calls for the question . . .

INTERNATIONAL PRESIDENT DENNIS: Those in favor of the Committee's report please raise your right hands. Down hands. Those opposed.

Well, let's see if we can see a little better by a standing vote. Those in favor of the Committee's report please rise.

. . . Those in favor of the motion arose . . .

INTERNATIONAL PRESIDENT DENNIS: Everybody rise who is in favor of the Committee's report, and we will have the Tellers tabulate their particular tables. It looks to me like we have two thirds.

. . . Cries of "Oh" and applause . . .

INTERNATIONAL PRESIDENT DENNIS: This is the Committee's amended report. You see, the TC Division over on this side of the house only has a half a vote.

. . . Cries of "Roll call" . . .

INTERNATIONAL PRESIDENT DENNIS: And I will bet my right arm that there's two thirds of the Delegates standing.

. . . Cries of "No" and "Roll call" . . .

INTERNATIONAL PRESIDENT DENNIS: Now we are not going to gain anything by a lot of hollering. I will do what this Convention wants me to do. I am trying to be fair and honest about this thing. I could very easily say that this is a two-thirds vote. So now, if anybody wants to get a little rough with the Chair, the Chair in turn will get a little rough with them. (Applause)

Now, I have tried to be considerate. (Applause)

I now declare we have a two-thirds vote standing. (Applause and cheers) And this is the ruling of the Chair. (Applause and cheers)

DELEGATE TOPPEN: Committee Report No. 5, page 4, Resolution No. 7, page 4.

DELEGATE F. M. SHEAHAN (TC Division 1): Mr. Chairman, Mr. Chairman.

INTERNATIONAL PRESIDENT DENNIS: What is the problem?

DELEGATE SHEAHAN: Point of privilege.

INTERNATIONAL PRESIDENT DENNIS: State it.

DELEGATE SHEAHAN: I have a point of privilege.

INTERNATIONAL PRESIDENT DENNIS: State your point.

DELEGATE SHEAHAN: I wish to challenge the Chair on the vote. (Applause and cheers)

DELEGATE JOAN D. BRDA (Lodge 36): I second the motion. (Applause)

INTERNATIONAL PRESIDENT DENNIS: All right. If two-thirds of the Delegates challenge the decision of the Chair, we will then have a roll call vote. (Applause)

Now, those delegates who wish to challenge the decision of the Chair please rise.

. . . Those who wished to challenge the decision of the Chair arose . . .

INTERNATIONAL PRESIDENT DENNIS: That is not two-thirds of the house. (Applause and cheers)

The decision of the Chair stands.

DELEGATE TOPPEN: Committee Report No. 5, page 4, Resolution No. 7, page 4.

This resolution has been submitted by one of our Canadian Board of Adjustments to delete that portion of Article 5, Section 3, pages 6 and 7 of the Grand Lodge Constitution, pertaining to partisan politics.

Your committee feels that the primary purpose of such submission was to clearly establish the current practice of allowing the International Vice President-Canada, with the approval of the International President, to support political parties in Canada. It is necessary to support a party as a whole, rather than individual candidates, so as to effectively exert political strength in behalf of our Canadian membership. The Canadian political system is different than the United States System, and we must give recognition to this difference.

Your committee feels that our current policy, as announced at the last Brotherhood Convention, contemplates such handling of endorsement of political parties by our Canadian International Vice President; however, we desire to clearly establish through this minor constitutional amendment the current practice now being followed.

The committee on Grand Lodge Constitution and Laws proposes to amend Article 5, Section 3, on pages 6 and 7 of the Constitution of the Grand Lodge, as follows:

THAT ARTICLE 5, SECTION 3 BE AMENDED TO READ AS FOLLOWS:

"Section 3. The influence or sympathy of the Brotherhood as a body shall never be enlisted or used in favor of any religious organization. No member is permitted to discuss in any manner (in meetings while

discussing Brotherhood business) any religious matters, or criticize the religious belief of any member; nor can the influence or sympathy of the Brotherhood as a body be used in favor of partisan politics, or any political party, (except where the International Vice President-Canada, with the authority of the International President and in accordance with Canadian Laws, has made such an endorsement in Canada), and any lodge permitting the same to be done shall have its charter suspended, and all members participating in such discussion shall be subject to expulsion."

Mr. Chairman, I move adoption of the committee's report.

DELEGATE FITZJARRELL: I second the motion.

INTERNATIONAL PRESIDENT DENNIS: You have heard the committee's report. What is your pleasure?

. . . The question was called . . .

INTERNATIONAL PRESIDENT DENNIS: Mike 2.

* * *

EXHIBIT H

1971 CONSTITUTION

ARTICLE 25
REPRESENTATION

American Federation of Labor and Congress of Industrial Organizations

Section 1. Representatives to Conventions of the American Federation of Labor and Congress of Industrial Organizations shall consist of the International President and such other members appointed by him in number sufficient to give the Brotherhood the representation to which it is entitled under the governing laws of the American Federation of Labor and Congress of Industrial Organizations. The allowance to delegates (except International Officers and full-time employes of the Grand Lodge) shall be on the same basis as was provided for delegates attending the preceding Grand Lodge Convention. Full-time International Officers and employes shall be paid their expenses and regular salaries.

ARTICLE 26
COMMUNICATING—SOLICITING FUNDS

Section 1. A subordinate unit, officer, committee member, or member shall not send circulars or letters to any subordinate unit or member encouraging or advocating violation of, or having the tendency or effect of violating, the obligations imposed upon them by Article 5 of this Constitution.

Section 2. (a) Subordinate units, officers, committee members and members must not solicit funds in the name of the Brotherhood unless authorized by the International President.

(b) A subordinate unit of the Brotherhood shall not be denied the right to publish souvenir programs for social functions when they do not carry paid advertising, nor are social functions conducted by a subordinate unit prohibited when the sale of tickets is handled by its own member.

ARTICLE 27
FEES AND DUES

Section 1. The initiation fee of the Brotherhood shall be thirty dollars ($30.00) and the reinstatement fee of the Brotherhood shall be forty-five dollars ($45.00). The initiation or reinstatement fee may be waived in whole or in part by the International President on applicants for membership who are in the service of an employer where the Brotherhood is conducting an organization campaign or endeavoring to

establish or maintain right of representation for collective bargaining. The Grand Lodge shall receive ten dollars ($10.00) of each initiation fee and twenty dollars ($20.00) of each reinstatement fee, which shall be apportioned as follows:

	Init. Fee	*Rein. Fee*
General Fund Account (Grand Lodge)	$ 6.25	$16.25
Protective Fund Account (Grand Lodge)	1.50	1.50
Convention Fund Account (Grand Lodge)	.60	.60
Death Benefit Department Fund (Grand Lodge)	.90	.90
Official Publication Account (Grand Lodge)	.30	.30
Organization Fund Account (Grand Lodge)	.45	.45
Total to Grand Lodge	$10.00	$20.00

The Board of Adjustment shall receive ten dollars ($10.00) from each initiation or reinstatement fee, the remainder to be retained by the Local Lodge.

Any subordinate unit that desires to establish an initiation fee above the thirty dollar ($30.00) or a reinstatement fee above the forty-five dollar ($45.00) amount shall be permitted to do so provided a majority of the members of said unit and the International President approves same.

Section 2. (a) Effective July 1, 1971, all full dues established by the 1967 Convention, or by other provisions of the Constitution and Laws of the Brotherhood applicable to all members under the jurisdiction of each Board of Adjustment and System Division, shall be increased five dollars and fifty cents ($5.50) per member per month, except that no full dues shall be less than eleven dollars ($11.00) per member per month.

There shall be two kinds of dues applicable to members of the Brotherhood. Full dues shall be not less than eleven dollars ($11.00) per member per month of which a minimum of two dollars and sixty cents ($2.60) per member per month shall be retained for State Legislative tax and the use of the lodge; retention of membership dues, which shall be one dollar and fifty cents ($1.50) per member per month, of which forty cents (40c) shall be retained for the use of the lodge. Full dues shall apply to each member who receives pay for forty (40) hours or more in any calendar month on a position in industry over which the Brotherhood claims jurisdiction, or the equivalent compensation under any agreement between an employer and the Brotherhood; to a member promoted to excepted or official positions and a member taking a voluntary leave of absence requiring approval of the organization.

Each Board of Adjustment and System Division is authorized to fix uniform dues (above the minimum of eleven dollars ($11.00) per member

per month) to apply to all members subject to the scope rule of each individual contract under the jurisdiction of the Board of Adjustment or System Division, provided such dues shall be sufficient to meet Grand Lodge per capita tax, lawfully approved Board of Adjustment or System Division per capita tax and State Legislative Committee per capita tax, subject to the approval of the International President.

Retention of membership dues shall apply to a member who performs no service in a calendar month due to reduction in force, furlough, military service, sickness, disability, resignation, and a member who receives pay for less than forty (40) hours in any calendar month on a position in industry over which the Brotherhood claims jurisdiction; and a member working in another craft in the industry where he is required to join another union under a Union Shop Agreement.

Members who have retired because of age and who perform no compensated service on a position in industry over which the Brotherhood claims jurisdiction will be classified as associate members, with full rights to participate in the Death Benefit Department, if qualified, receipt of RAILWAY CLERK/interchange, with right to attend lodge meetings of the Brotherhood, except they shall have no vote in the election of officers, or on matters pertaining to wages, rules, working conditions or grievances, and they may retain such membership by the voluntary payment of one dollar and fifty cents ($1.50) per month.

(b) Subordinate units shall be allowed appropriate credit on the quarterly per capita tax report for sick and out-of-work members. The subordinate unit will be billed on per capita tax report for members in military service and members drawing disability pension or age and service pension at the reduced per capita tax rate.

(c) Subordinate units shall not be permitted to waive dues of any member or officer except that members on strike over two (2) weeks and who have not secured other employment shall be exempt from the payment of dues.

(d) In the event of extraordinary circumstances, involving ongoing organizational efforts, new representation, specific national problems, restrictive labor laws, or other unusual circumstances, any subordinate unit may petition the International President for permission to lower the minimum Board of Adjustment, System Division or Local Lodge per capita tax specified herein and elsewhere. The International President may grant such waiver subject to annual review by him, provided that, in his judgment, the needs of the Brotherhood can be adequately met and the circumstances warrant such action.

(e) In the event of extraordinary circumstances involving new organizational efforts, newly acquired representation rights, initial contracts, and situations wherein existing rates of pay or working conditions

are determined to be below the over-all pattern of our Brotherhood, any subordinate unit or units involved may petition the International President for, or the International President may initiate on his motion, a partial reduction of the Grand Lodge per capita tax for the members covered by the respective contract or organizing situation, subject to the approval of the Finance Committee. Reductions so granted shall not extend beyond the term of the initial contract unless resubmitted and approved by the Finance Committee.

Assessments

Section 3. No assessment shall be levied by any subordinate unit except by approval of the International President.

PER CAPITA TAX

Section 4. (a) Grand Lodge per capita tax shall be four dollars and twenty cents ($4.20) per month or twelve dollars and sixty cents ($12.60) per quarter on full dues paying members, except that no per capita tax is payable on new or reinstated members for the quarter in which they apply for membership; one dollar and ten cents ($1.10) per month or three dollars and thirty cents ($3.30) per quarter on reduced dues paying members and shall be apportioned quarterly by the International Secretary-Treasurer to the different funds and fund accounts as follows:

Per Capita Tax on Full Dues Paying Members

General Fund Account (Grand Lodge)	$ 3.10
Protective Fund Account (Grand Lodge)	.75
Convention Fund Account (Grand Lodge)	.60
Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
Organization Fund Account (Grand Lodge)	1.25
*Legislative Fund Account (Grand Lodge)	.10
Total	$12.60

*Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced three and one-third cents (3⅓c) per month, by notifying his Financial Secretary in writing and paying his dues direct to said Financial Secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the Financial Secretary in writing and cannot be retroactive. The Financial Secretary will acknowledge receipt of notice.

Retention of Membership Per Capita Tax

General Fund Account (Grand Lodge)	$ .80
Convention Fund Account (Grand Lodge)	.60
Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
*Legislative Fund Account (Grand Lodge)	.10
Total	$3.30

*Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced three and one-third cents (3⅓c) per month, by notifying his Financial Secretary in writing and paying his dues direct to said Financial Secretary. Reduction in dues becomes effective with the month following the month in which the member notifies his Financial Secretary in writing and cannot be retroactive. The Financial Secretary will acknowledge receipt of notice.

Associate Membership
Per Capita Tax

General Fund Account (Grand Lodge)	$ .75
Convention Fund Account (Grand Lodge)	.00
Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
*Railway Clerks Political League	.75
Total	$3.30

*Any Associate member who does not desire to make a voluntary contribution to Railway Clerks Political League may have his dues reduced 25c per month by notifying his Financial Secretary in writing and making his payment direct to said Secretary. Reduction in dues will become effective with the month following the month in which the Associate member notifies his Financial Secretary in writing and cannot be retroactive. The Financial Secretary will acknowledge receipt of the notice.

NOTE: An Associate member is a member who has retired because of age and who performs no compensated service on a position in industry over which the Brotherhood claims jurisdiction, and per capita tax received on him is only allocated to those funds in which he has an interest or from which he receives service. The purpose of the voluntary contribution to Railway Clerks Political League is to advance and protect his interest through political activity in the legislative field and in particular to work for improvement of retirement systems established and maintained under law.

(b) Grand Lodge per capita tax is payable quarterly in the month following the close of each calendar quarter. Tax for the first quarter of each calendar year is payable in April; second quarter tax in July; third quarter tax in October, and fourth quarter tax in January. Failure of a subordinate unit to pay Grand Lodge tax within the time specified above subjects it to suspension. Members in good standing of such suspended subordinate unit may transfer to another subordinate unit.

(c) Per capita tax advanced on members who are not subject to suspension under the provisions of Article 6, Section 1, of the Lodge Statutes or the By-Laws of other subordinate units, at the time quarterly per capita tax report is made to the International Secretary-Treasurer, shall upon proper certification be credited to the lodge or subordinate unit by the International Secretary-Treasurer for any month of the current quarter and the last month of the previous quarter for which dues were not paid.

Board of Adjustment Per Capita Tax

(d) Board of Adjustment and System Division per capita tax shall be not less than four dollars and twenty cents ($4.20) per member per month.

Section 5. All monies received by the International Secretary-Treasurer shall be deposited in the General Fund of the Brotherhood and each of the above fund accounts shall be credited with its proportion of the fees and dues as provided above, and separate records kept of each fund and fund account; provided, however, the Death Benefit Fund shall be maintained separate and apart from all other fund accounts of the Brotherhood.

Section 6. The International Secretary-Treasurer shall be the custodian of all funds.

EXHIBIT I

POLICY STATEMENT OF THE BRAC ISSUED BY THE INTERNATIONAL PRESIDENT AND APPROVED BY THE EXECUTIVE COUNCIL

SUBJECT: Procedure Providing Reductions In Dues and Agency Fees To Members And Non-Members Who Object To The Use Of Their Union Dues Or Agency Fees For Political Purposes Not Germane To Collective Bargaining.

REASON FOR ADOPTION OF THE POLICY STATEMENT: In 1963, the United States Supreme Court rendered its decision in the case of *BRAC v. Allen* (1963) 373 U.S. 113. That decision held that objecting members of a labor union were entitled to a reduction in their dues obligations in the same proportion that total union expenditures for political purposes not germane to collective bargaining bore to total union expenditures. In so ruling, the Court recognized the right of unions to expend dues and agency fees collected pursuant to collective bargaining agreements in support of all activities germane to collective bargaining and to expend non-dissenters' dues and fees for political purposes not germane to collective bargaining. Only the expenditures of dissenters' dues and fees for political purposes not germane to collective bargaining were subject to the refund. Unions were urged by the Court to adopt voluntary internal procedures to accomplish the refunds without the necessity of judicial recourse.

Although most of the funds this union expends on political purposes not germane to collective bargaining are raised through voluntary contributions to the Railway Clerks Political League (expenditures to or in behalf of candidates for Federal office are made from these voluntary contributions), some such political expenditures are made from dues and agency fees. While the Supreme Court has recognized the legality of these expenditures from union dues and fees, the Court has also recognized the right of dissenters not to pay mandatory dues and fees which are expended for political purposes not germane to collective bargaining.

This union was a party in the *Allen* case and, in an effort to comply with the mandate of the Court, we adopted the dues reduction procedure presently embodied in Article 27, Section 4(a) of the Constitution of the Grand Lodge. Three and one-third cents per month was thought to constitute an approximation of the dues reduction required by the United States Supreme Court.

Recent developments have suggested the necessity for adoption of a policy expanding and clarifying the dues reduction procedure. Certain members of our union and certain non-members paying agency fees instituted a lawsuit seeking, among other relief, to compel the adoption of a procedure which would permit objecting members and non-members to recover that proportion of their dues and agency fees being spent on political purposes not germane to collective bargaining to which they had objection. In addition to the lawsuit, confusion regarding the availability of the three and one-third cent dues reduction to non-members paying agency fees suggested the necessity for clarification and expansion of the policy on dues reductions. Furthermore, it is recognized that the allocation made some years ago may no longer correlate with actual expenditures of dues and fees for political purposes not germane to collective bargaining.

POLICY: The following policy statement is declared by the International President and the Executive Council, to be applicable to members and non-members in the United States paying dues or agency fees, effective January 1, 1974:

1. Any member or non-member who pays dues or agency fees pursuant to a collective bargaining agreement shall have the right to object to the expenditure of a portion of his dues or agency fees for political purposes not germane to collective bargaining.

2. Expenditures for political purposes not germane to collective bargaining shall include the following expenditures:

(a) Expenditures for payments to or on behalf of any candidate for public office in connection with said candidate's campaign for election to such public office.

(b) Expenditures to or on behalf of any political party or political organization.

(c) Expenditures for the holding of any meeting or printing or distribution of any literature or documents in support of or opposition to any such candidate, political party, or political organization.

(d) Expenditures to or on behalf of any organization which espouses a political viewpoint or ideology for purposes not germane to

collective bargaining.

3. The board of Trustees of the Grand Lodge shall review the records of the union maintained by the International Secretary-Treasurer and shall determine the amount of receipts from dues and agency fees expended for political purposes not germane to collective bargaining by this union, including specifically such expenditures by the Grand Lodge, the System Boards of Adjustment, the State Legislative Committees, and the Local Lodges, in each of the past three years. The figures for each year of the last three shall be added together and divided by three to determine the average expenditure for political purposes not germane to collective bargaining.

4. The Board of Trustees of the Grand Lodge shall likewise compute the average receipts from dues and agency fees by computing the total receipts from dues and agency fees in each year of the last three years, adding the figures for each year together, and dividing that sum by three.

5. The Board of Trustees of the Grand Lodge shall then compute the proportion of the average receipts of dues and agency fees which is expended on political purposes not germane to collective bargaining by dividing the average expenditures for political purposes not germane to collective bargaining by the average receipts of dues and agency fees.

6. The above described computations by the Board of Trustees shall be made annually in the month of February, using the figures for the preceding three years. If the ratio of expenditures for political purposes not germane to collective bargaining to receipts of agency fees and dues, when multiplied by the monthly dues or agency fee obligation of an objecting member or non-member, is less than three and one-third cents per month, the amount of the dues reduction shall nevertheless be three and one-third cents per month.

7. Any member or non-member who perfects such an objection to the expenditure of dues or agency fees for political purposes not germane to collective bargaining shall be entitled to a reduction in such dues or agency fee obligation in the same proportion that average expenditures for political purposes not germane to collective bargaining bears to average receipts of dues and agency fees.

8. Any member paying dues or non-member paying agency fees may perfect such an objection by individually notifying the Financial

Secretary of the Local Lodge or the General Secretary and Treasurer of the System Division to which dues and fees are paid by certified or registered mail, provided, however, that such objection shall be timely during the first thirty days of union membership and during the first thirty days of each calendar year, except as provided in paragraph 10. An objection may be continued from year to year only if renewed during the thirty day period at the beginning of each year. Objecting members and agency fee payers who pay their dues or agency fees directly to their Local Lodge Financial Secretary or to their System Division General Secretary and Treasurer shall be entitled to a reduction in their dues or agency fees of that proportion of their monthly dues and agency fees which is the same as the ratio of average expenditures for political purposes not germane to collective bargaining to average receipts of dues and fees. Objecting members and agency fee payers who wish to pay their dues or agency fees through a company check-off shall receive an annual refund of that proportion of their dues and agency fees which is the same as the ratio of average expenditures for political purposes not germane to collective bargaining to average receipts of dues and fees.

9. If an objecting member or agency fee payer is dissatisfied with the proportional allocation made by the Board of Trustees of the Grand Lodge, said individual may appeal the ruling to the International President. If the objector is then dissatisfied with the decision of the International President, said individual shall have the right of an appeal to the Executive Council and, thereafter, if still dissatisfied, of an appeal to the Convention.

10. Any objecting dues paying member or non-member paying agency fees, who has filed an objection with the Local Lodge or System Division prior to the adoption of this policy statement, shall have said objection honored retroactively from the date of the original objection, provided such objecting member or non-member files with the Financial Secretary of the Local Lodge or General Secretary and Treasurer of the System Division a copy of the original objection along with a current objection; if a copy of the original objection is unavailable, the objecting member or non-member may file a statement declaring the date and content of the prior objection and the unavailability of a copy thereof along with a current objection. Renewal of prior objections, as well as new objections by members and non-members who had not previously objected, shall be timely if filed within ninety days of the effective date of this policy statement. Otherwise, objections shall be timely only as provided in paragraph 8.

Issued this 24th day of January 1974.

By: C. L. Dennis

C. L. Dennis
International President

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HOWARD ELLIS, PAMELA BALIAN, RAY SAULS, NANCY DEAN, PHYLLIS PAYNE, NOEL FONTAINE, SALLY LOUDIN,	CIVIL NO. 73-113-N
Plaintiffs,	ANSWER TO FIRST AMENDED COMPLAINT
vs.	
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION;	

CALIFORNIA STATE LEGISLATIVE COMMITTEE OF THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049,

Defendants.

Defendants Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes System Board of Adjustment No. 451, Air Transport Division; California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes; Skyliner Lodge Local 3001; Skyharbor Lodge Local 3014; and Arrowliner Lodge Local 3049 (hereinafter collectively referred to as "BRAC"), for answer to the First Amended Complaint on file herein, admit, deny and allege as follows:

1. In answer to the allegations of paragraph 1, defendants deny each and every allegation contained in said paragraph.

2. In answer to the allegations of paragraphs 2 and 3, defendants admit each and every such allegation.

3. In answer to the allegations of paragraph 4, defendants admit that the California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes is an unincorporated association, subsidiary to and affiliated with the BRAC, that the Committee sponsors political candidates, causes and legislation in the state of California, and that these activities are supported financially by thirty cents per member per month derived from the compulsory dues and fees paid by plaintiffs and others. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 4.

4. In answer to the allegations of paragraphs 5 and 6, defendants admit each and every allegation.

5. In answer to the allegations of paragraphs 7 and 8, defendants admit that the agreements attached to the complaint as Exhibits A, B, and C are agreements executed by BRAC and Western and that said agreements set forth terms and conditions relating to the obligations of employees with respect to BRAC. Except as expressly admitted, defendants deny each and every allegation of paragraphs 7 and 8.

6. In answer to the allegations of paragraph 9, defendants admit that plaintiffs refer in their complaint to the union security provisions of the collective bargaining agreement as "compulsory union membership agreement."

7. In answer to the allegations of paragraph 10, defendants admit that plaintiffs were advised by BRAC by letters of March 1, 1971, that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues and that examples of those letters are attached to the complaint and marked Exhibit D. Except as otherwise expressly admitted, defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 10, and, placing their denial on that ground, deny each and every such allegation.

8. In answer to the allegations of paragraph 11, defendants admit said allegations.

9. In answer to the allegations of paragraph 12, defendants admit that plaintiffs have declined to sign applications for membership in BRAC, that plaintiffs have paid agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues, and that plaintiffs Balian, Dean, Payne, Fontaine, and Loudin continue to pay agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues. Defendants deny that plaintiffs Ellis and Sauls continue to pay the agency shop fees in amounts equivalent to the required BRAC initiation fees and monthly membership dues. In answer to the allegations of the second sentence of paragraph 12, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and, placing their denial on that ground, deny each and every such allegation.

10. In answer to the allegations of paragraph 11, defendants admit that plaintiffs Balian, Sauls, Dean, Payne, and Fontaine have mailed letters to BRAC substantially in the form quoted in paragraph 13. Except as otherwise expressly admitted, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and, placing their denial on that ground, deny each and every such allegation.

COUNT I

11. In answer to the allegations incorporated by reference in paragraph 14, defendants incorporate herein by reference each and every admission, denial and allegation of paragraphs 1 through 10 above.

12. In answer to the allegations of paragraph 15, defendants admit that dues and fees monies have been used in part for the activities described in sub-paragraph (c). Except as otherwise specifically admitted, defendants deny each and every allegation contained in paragraph 15.

13. In answer to the allegations of paragraph 16, defendants deny each and every such allegation.

14. In answer to the allegations of paragraph 17, defendants admit that the Railway Labor Act authorizes the designation of BRAC as exclusive bargaining agent for all employees in the collective bargaining unit in which plaintiffs are employed and empowers BRAC and Western to enter into the form of union security agreement described in paragraphs 7 and 8 of the complaint. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 17.

COUNT II

15. In answer to the allegations incorporated by reference in paragraph 18, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 10 and 12 through 14 above.

16. In answer to the allegations of paragraph 19, defendants admit that, as the statutory exclusive bargaining representative of plaintiffs, BRAC owes each of them the fiduciary duty of fair representation.

Except as otherwise exprssly [*sic*] admitted, defendants deny each and every allegation contained in paragraph 19.

COUNT III

17. In answer to the allegations incorporated in paragraph 20, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 10, 12 through 14, and 16 above.

18. In answer to the allegations of paragraph 21, defendants admit said allegations.

19. In answer to the allegations of paragraph 22, defendants deny each and every such allegation.

20. In answer to the allegations of paragraph 23, defendants admit that the dues reduction procedure set forth in paragraph 21 provides for no reduction of the initiation fees, that Article 27, Section 4(a) of the BRAC constitution provides that three and one-third cents per month from each member's dues shall be applied to the Legislative Fund Account (Grand Lodge), and that Article 23, Section 4(b) of the BRAc constitution authorizes each State Legislative Committee to levy against each member in the state a levy of not less than thirty cents per month for the transaction of its business, and that this amount is paid from each member's monthly dues. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 23.

21. In answer to the allegations of the Conclusion, defendants deny each and every such allegation.

COUNT IV

22. In answer to the allegations incorporated in paragraph 24, defendants incorporate herein by this reference each and every admission, denial, and allegation of paragraphs 1 through 10, 12 through 14, 16, and 18 through 20 above.

23. In answer to the allegations of paragraph 25, defendants admit that, at the Convention in 1967, a dues reduction procedure was adopted as part of the dues structure and was set forth in the constitution as amended at the said Convention. Defendants further admit that a copy

of a portion of the proceedings from the 1967 Convention is attached as Exhibit F to the amended complaint. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 25.

24. In answer to the allegations of paragraph 26, defendants admit that, at the Convention in 1971, the dues reduction procedure was revised and that the procedure was set forth in the constitution as amended at the 1971 Convention. Defendants further admit that a copy of a portion of the proceedings of the 1971 Convention is attached as Exhibit C to the amended complaint. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 26.

25. In answer to the allegations of paragraph 27, defendants admit that, under Article 34, Section 1 of the BRAC constitution, constitutional amendments may be accomplished at a convention and by referendum. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 27.

26. In answer to the allegations of paragraph 28, defendants admit that their International President issued a Policy Statement, a copy of which is attached as Exhibit I to the amended complaint; that Article 13, Section 2 of the BRAC constitution provides in part that the International President shall "enforce strict observance of the Constitution, laws, rules and regulations of the Brotherhood."; that Article 13, Section 3 provides in part that the International President "shall at all times strictly enforce the Grand Lodge Constitution, Statutes For The Government Of Lodges, Protective Laws, and T.C. Division By-Laws of the Brotherhood and shall call to account any member or members of the Brotherhood violating the same."; that Article 13, Section 4 of the BRAC constitution provides that the International President "shall have sole power and authority to interpret the Constitution and laws, subject to appeal to the Executive Council, and shall advise the membership through RAILWAY CLERK/interchange of any such interpretations issued, and may issue dispensation not inconsistent with said Constitution and laws."; and that Article 5, Section 2(a) of the BRAC constitution provides in part that:

> "It is the obligation and responsibility of every officer, subordinate unit and member to comply with the Constitution, Statutes For The Government of Lodges, Protective Laws and T.C. Division By-Laws of this Brotherhood and the orders of its officers when in conformity therewith. . . ."

Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 28.

27. In answer to the allegations of paragraph 29, defendants deny each and every said allegation.

28. In answer to the allegations of paragraph 30, defendants admit that plaintiffs propounded interrogatories on January 21, 1974; that on January 24, 1974 the Policy Statement was issued effective January 1, 1974; that International President Dennis sent a copy of the Policy Statement to each member of the Executive Council for his approval and instructed each member by letter that "It is imperative that prompt action be taken on this matter and that your approval or disapproval be received before February 1, 1974."; and that by letter dated February 14, 1974, International President Dennis instructed all Local Lodge financial secretary-treasurers in the United States to mail copies of the Policy Statement to agency fee payers for whom the Grand Lodge did not have correct addresses and that, as part of these instructions, International President Dennis stated "This matter should take precedence over any other duty you may have as Financial Secretary-Treasurer of your Lodge." Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 30.

29. In answer to the allegations of paragraph 31, defendants deny each and every said allegation.

30. In answer to the allegations of paragraph 32, defendants admit the allegation in sub-paragraph B that the Policy Statement, on its face, does not encompass payments plaintiffs are compelled to make in the form of initiation fees and assessments; defendants admit the allegation of sub-paragraph G that the persons serving on the Appeals Committee of the Convention are appointed by BRAC's International President subject to ratification by the Convention; defendants admit the allegations of sub-paragraph H that no time limitations are provided in the Policy Statement and that conventions are scheduled four years apart; defendants admit the allegations of sub-paragraph I that International President Dennis has stated that plaintiffs may not be represented on appeal by an attorney, unless such attorney is a BRAC member, and that International President Dennis has stated that there are only approximately fifteen to twenty-five such attorneys in the United States who do not serve in a representative capacity for the union, which has approximately 200,000 members in the United States; defendants admit that

sub-paragraphs (1) through (4) of sub-paragraph K correctly summarize some of the provisions of the Policy Statement and further admit the allegations of sub-paragraph (5) of sub-paragraph K except for the last sentence of said sub-paragraph; defendants admit the allegations of sub-paragraph (L) insofar as that sub-paragraph alleges that the International President has stated that all expenses incurred by an objector in his appeal must be borne by the objector, even if he succeeds in his appeal; defendants admit the allegation of sub-paragraph M that paragraph 8 of the Policy Statement has the effect of stating that members only may initially object during the first thirty days of their membership, while appearing to deny a similar right to agency payers during the initial thirty days of their agency fee status, but defendants allege that any such difference in treatment between members and agency payers was unintentional.

Except as otherwise expressly admitted, defendants deny each and every allegation of paragraph 32 and its sub-paragraphs.

31. In answer to the allegations of paragraphs 33, 34, and 35, defendants deny each and every said allegation.

AS AND FOR THEIR FIRST AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

32. The amended complaint fails to state a claim upon which relief can be granted in Count I, Count II, Count III, or Count IV, or any of them.

AS AND FOR THEIR SECOND AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

33. Plaintiffs have failed to attempt to exhaust internal and administrative remedies available to them.

AS AND FOR THEIR THIRD AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

34. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 337, subdivision (1).

AS AND FOR THEIR FOURTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

35. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 338, subdivision (1).

AS AND FOR THEIR FIFTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

36. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 343.

AS AND FOR THEIR SIXTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

37. Insofar as the amended complaint and Counts I, II, III, and IV, and each of them, allege a claim arising out of the interpretation or application of the collective bargaining agreement between BRAC and Western Air Lines, said amended complaint and Counts I, II, III, and IV, and each of them, are preempted by the provisions of the Railway Labor Act, 45 U.S.C., Section 184, and within the exclusive jurisdiction of the System Board of Adjustment.

WHEREFORE, defendants pray:

(1) That plaintiffs, and each of them, take nothing by their action;

(2) For costs of suit incurred herein; and

(3) For such other and further relief as the Court deems just and proper.

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and ROTHSCHILD
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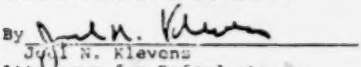
By 
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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ALLEN FAILS, JACK FROST, TWILA JOHNSON, BRENT ERKMAN, HELENE TAYLOR, CANDICE BROWN, GAYLE NELSON, JANIS DAMANTE, AUDREY RYAN, MARY ANN GROTE, SHIRLEY BALLARD, LOA YOUNG, MARGUERITE DOUGLAS, JOYCE EMMINGER and KENNETH WISOR,

Plaintiffs,

v.

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE of the BROTHERHOOD OF RAIL-

No. 73-118-S

COMPLAINT FOR JUDGMENT, MONETARY DAMAGES AND INJUNCTIVE RELIEF

WAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049,

Defendants.

1. This Court has jurisdiction over this matter by virtue of Title 28, United States Code, § 1337, and Title 45, United States Code, § 151, et seq. The questions presented herein arise under the Constitution and laws of the United States.

2. Plaintiffs are citizens of the United States, residents of the State of California, and are employed by Western Air Lines, Inc. (hereinafter "Western") at various locations in the State of California, including Los Angeles, San Francisco, and San Diego.

3. Defendants Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, and its subsidiary organizations System Board of Adjustment No. 451, Air Transport Division, Skyliner Lodge Local 3001, Skyharbor Lodge Local 3014 and Arrowliner Lodge Local 3049 (hereinafter collectively referred to as "BRAC") are unincorporated associations and labor organizations whose purpose, in part, is the representation of employees for collective bargaining over wages, hours, and working conditions within the meaning of Section Two of the Railway Labor Act, 45 U.S.C. § 151 et seq.

4. Defendant California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes (hereinafter "the Committee"), is an unincorporated association, subsidiary to and affiliated with BRAC, which has as its purpose, in part, the sponsorship of political candidates, causes and legislation in the State of California, and these activities are supported financially by a substantial amount of funds derived from the compulsory dues and fees exacted from plaintiffs and the class they represent.

5. Western Air Lines, Inc. is a corporation authorized to and doing business in the State of California, engaged in the transportation of passengers and freight in interstate commerce.

6. At all times material hereto, Western has maintained a collective bargaining relationship with BRAC governing the terms and conditions of employment of plaintiffs and other members of the class they represent, as described below. BRAC was and is the exclusive bargaining agent for the craft or class of employees in which plaintiffs and the class they represent are employed.

7. The collective bargaining agreement applicable at all times pertinent hereto includes a provision executed by BRAC and Western on October 27, 1966 making union membership obligatory for all new employees, and requiring BRAC members to maintain their membership. A copy of this provision is attached hereto, marked Exhibit A, and incorporated herein by reference.

8. Under the terms of the aforesaid agreement employees hired prior to October 27, 1966 were not required to join BRAC or make payments to it. However, by a separate letter agreement of that date, Western agreed to compel such employees to join BRAC at such time as BRAC was able to demonstrate a membership level of 85% of the bargaining unit. By a letter agreement of February 26, 1971, BRAC and Western implemented and modified the October 27, 1966 agreement. Those agreements are attached hereto, respectively marked Exhibit B and Exhibit C, and incorporated herein by reference.

9. The agreements compelling union membership or the payment of initiation fees and dues, referred to in paragraphs 7 and 8 above, are hereinafter collectively referred to as the "compulsory union membership agreement."

10. By letters of March 1, 1971 and March 4, 1971, plaintiffs and the class they represent were advised by BRAC and Western that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues. Examples of those letters are attached hereto, respectively marked Exhibit D and Exhibit E, and incorporated herein by reference.

11. By the terms of the compulsory union membership agreement and other provisions of the collective bargaining agreement, Western has obligated itself to enforce such provisions against employees declining to pay union dues and fees, by threatening or effecting their termination. Plaintiffs and the class they represent have been advised by responsible representatives of Western and BRAC that they will be similarly

discharged from employment if they fail or refuse to pay the BRAC initiation fees and dues.

12. Certain of the plaintiffs and the class they represent were induced to obtain formal membership in BRAC by reason of written and oral misrepresentations made to them by officials and agents of BRAC, and by Western officials in behalf of BRAC, that unless they became union members they would be subject to discharge from their employment under provisions of the compulsory union membership agreement, and they were not advised that they could decline union membership and pay agency fees in lieu thereof. All of the plaintiffs and the class they represent, are union members and are involuntary dues and fee payers.

13. Plaintiffs are members and representatives of a class of Western employees, each of whom has advised BRAC of his specific objection to the exaction of dues for political purposes and for all other purposes not directly related to collective bargaining. Such objections were stated in substantially the following form:

> As an employee of Western Air Lines, I feel that the Brotherhood of Railway, Airline and Steamship Clerks does not properly represent my interests and I protest the compulsory "agency fee" I must pay the Brotherhood of Railway, Airline and Steamship Clerks, in order to retain my job. In addition, I hereby protest the use of these fees for any purpose other than the cost of collective bargaining and specifically protest the support of legislative goals, candidates for political office, political efforts of any kind or nature, ideological causes, and any other activity which is not a direct cost of collective bargaining on my behalf. I demand an accounting and refund from the Brotherhood of Railway, Airline and Steamship Clerks of all fees exacted from me by the so-called "agency fee".

Their payment of fees and dues to BRAC is based solely upon threatened termination of employment.

14. The class represented by plaintiffs numbers in excess of one hundred seventy (170) persons, making it impractical for each to participate in this action as a named plaintiff.

15. BRAC has refused to accept some of the objection letters sent by plaintiffs and the class they represent, although they were properly addressed, with postage prepaid, and the postal authorities attempted to accomplish their delivery.

16. Questions of law and fact relative to the collection, transmission and expenditure of fees and dues payments are common to all members of the class in every respect; the questions of fact with respect to the expenditures by BRAC described in paragraph 24, infra, are identical to all members of the class.

17. The claims of the plaintiffs are typical of the entire class, differing only with respect to the amounts of forced payments, based upon the duration of the individual class member's employment.

18. The prosecution of separate actions by individual class members could create inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the union defendants, in that different courts or juries might reach different determinations with respect to their activities within the category of prohibited expenditures, consisting of all such expenditures objected to by the class members for purposes not related to collective bargaining, nor to the adjustment and settlement of grievances and disputes. The prosecution of separate actions by individual members of the class would also create a risk of adjudication with respect to individual members of the class which would also create a risk of adjudication with respect to individual members of the class which would as a practical matter be dispositive of the interests of other members not parties to the adjudications in that a decision against the claims of some members of the class might as a practical matter make it impossible for other members of the class to recover on account of their claims since they are essentially similar.

19. Defendant BRAC has acted or refused to act on grounds generally applicable to the class, thereby making appropriate injunctive relief and declaratory relief with respect to the class as a whole in that BRAC has opposed the claims of all members of the class in every respect.

20. The questions of law or fact common to the members of the class predominate over questions affecting only individual members, in that the important and controlling questions of law and fact are common to all members of the class.

21. A class action is superior to other available methods for the fair and efficient adjudication of the controversy. As appears from the allegations heretofore made with respect to the similarity of the questions of law and fact involved in all of the claims, the determination of the

claims in a single action would be conducive of greater efficiency and economy in the operation of the courts than would numerous separate suits. The amount of money involved in the case of each individual's claim would make it burdensome for the claimants to maintain separate actions. There is not now pending any other litigation concerning this controversy.

22. The named plaintiffs will fairly and adequately protect the interests of the class.

Count I

23. Plaintiffs reiterate and reallege all of the allegations set forth in paragraphs 1 through 22 above.

24. The compulsory dues and fees exacted from plaintiffs and members of the class under the aforesaid compulsory union membership agreement have been used and are being used in substantial amounts by BRAC and the Committee over the objections of plaintiffs and the class they represent, for the following illegal and improper purposes:

(A). To support by direct and indirect financial contributions and expenditures the political campaigns of candidates for public office, including the offices of President and Vice-President of the United States, Senate and House of Representatives of the United States, and various state and local offices; many, if not all, of such candidates being opposed by plaintiffs and the class they represent.

(B). To propagate political and economic doctrines, concepts, ideologies, and legislative programs which are opposed by plaintiffs and the class they represent, thereby imposing upon them conformity to those doctrines, concepts, ideologies and programs.

(C). To cover the cost of publications, convention expenses, strike benefits, contributions to organizations and individuals, recreational activities, a death benefit plan and various other programs.

The foregoing expenditures are not reasonably necessary to the negotiation and administration of collective bargaining agreements, or the adjustment and settlement of grievances and disputes, nor are they necessary or germane to the representation of plaintiffs and the class they represent. Such expenditures have been accompanied by BRAC's use of its officers, employees, representatives and facilities, with attendant

expense, to support or oppose particular candidates or legislation and to conduct voter registration drives and "get out the vote" campaigns among persons thought to be favorably inclined to BRAC sponsored or endorsed candidates.

25. The exaction of dues and fees from plaintiffs and the class they represent under threatened loss of their employment, and the use of such payments for the purposes stated above, imposes upon them political and ideological conformity, prevents them from exercising their rights and privileges as citizens of the United States, deprives them of their civil rights guaranteed to them under statutes of the United States, injures them in their person and property, and abridges rights guaranteed to them under the First, Fifth and Ninth Amendments of the United States Constitution; which Amendments guarantee to individuals freedom of association, freedom of thought, freedom of speech, freedom of political action, freedom to pursue the occupations of their choice, freedom from unwarranted invasion of their privacy, and other fundamental personal rights and liberties.

26. The aforesaid deprivation and abridgement of the statutory and constitutional rights of plaintiffs and their class is accomplished by BRAC through its collective bargaining agreement with Western, acting under authority of the Railway Labor Act, 45 U.S.C. § 151, et seq. The Railway Labor Act authorizes the designation of BRAC as exclusive bargaining agent for all employees in the collective bargaining unit in which plaintiffs and the class they represent are employed, and empowers BRAC and Western to enter into the form of compulsory union membership agreement described above.

Count II

27. Plaintiffs reiterate and reallege all of the allegations of paragraphs 1 through 22 and 24 through 26.

28. As the statutory exclusive bargaining representative of plaintiffs and the class they represent, BRAC owes each of them the fiduciary duty of fair representation, but has wilfully and persistently breached this duty, and breached and implied condition of the collective bargaining agreement by expending a substantial portion of their dues and fees for purposes not reasonably related to the negotiation and administration of collective agreements nor to the adjustment and settlement of grievances and disputes. Such expenditures are not in furtherance of BRAC's

legitimate objectives and obligations as collective bargaining representative of plaintiffs and the class they represent; and BRAC's continuing diversion and conversion of their funds is arbitrary, in bad faith, and constitutes hostile discrimination against plaintiffs and the class they represent.

Count III

29. Plaintiffs reiterate and reallege all of the allegations of paragraphs 1 through 22, 24 through 26, and 28.

30. BRAC has established an internal procedure whereby persons who object to use of their monthly dues for political purposes may register that objection and reduce the amount of monthly dues payments. This provision is set forth in Article 27 of the BRAC Constitution, and has existed in substantially the following form at all times material hereto:

> Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced three and one third cents (3 1/3 ¢) per month, by notifying his Financial Secretary in writing and paying his dues direct to said Financial Secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the Financial Secretary in writing and cannot be retroactive. The Financial Secretary will acknowledge receipt of notice.

31. BRAC has arbitrarily, in bad faith, and with hostile discrimination denied participation in this procedure to plaintiffs and the class they represent. BRAC has breached its fiduciary duty by:

> (A). Refusing to accept some properly addressed, postage paid communications expressing objection to political expenditures, and requesting a refund; and
>
> (B). By refusing in every other instance to acknowledge receipt of notification of its members' objections to political expenditures.

32. The dues reduction procedure set forth in paragraph 30, even if it were available to plaintiffs and the class they represent is illegal, arbitrary, and discriminatory in its structure and operation for the following reasons:

> (A). It provides for no reduction of the initiation fees, yet plaintiffs aver upon knowledge and belief that a substantial

amount of revenue BRAC derives from such fees is used for political and ideological purposes.

(B). The amount of dues reduction (3 1/3 cents per month) is patently unrelated to the extent of prohibited expenditures. Two examples follow:

1. Article 27, Section 4(a) of the BRAC Constitution provides that 3 1/3 cents per month from each member's dues shall be applied to the "Legislative Fund Account (Grand Lodge)."

2. Article 27, Section 4(b) of the BRAC Constitution authorizes each State Legislative Committee to levy against each member in the state a levy "*of not less than thirty cents*" per month for "the transaction of its business." (Emphasis added). This amount is paid from each member's monthly dues. Such levies affect plaintiffs and the class they represent.

(C). No procedure is afforded objecting members by which they may ascertain the true relationship between prohibited spending and the miniscule amount of the dues reduction.

(D). Plaintiffs are informed and believe, and therefore aver, that the amounts of money expended by BRAC for political and ideological purposes and other purposes not germane to collective bargaining are greatly in excess of the amount by which a dues reduction may be allowed under the aforesaid procedure.

CONCLUSION

Plaintiffs and the members of the class they represent have no adequate remedy at law for the harm and damage resulting from the acts and conduct of defendants, as hereinabove alleged, because of their prospective loss of their employment, the loss of their seniority rights, the loss or diminution of their respective trade skills during any prolonged period away from their jobs and because they are and will be deprived of their liberty and property without due process of law in violation of their rights under the First, Fifth and Ninth Amendments of the United States Constitution. Irreparable harm, damage and injury will be done to plaintiffs and the members of their class unless the acts and conduct of defendants above complained of are permanently enjoined.

WHEREFORE, plaintiffs pray:

1. That the Court enter an order determining that this action may be maintained as a class action;

2. That the Court direct the best practicable notice to the class, including individual notice to each member, and that such notice shall advise each member that: (a) the Court will exclude him from the class if he so requests by a specified date; (b) the judgment whether favorable or not will include all members who do not request exclusion; and (c) any member who does not request exclusion may, if he so desires, enter an appearance through his counsel;

3. For a declaratory judgment holding that the herein described compulsory union membership agreement by its form, and in its operation and effect denies and abridges the statutory and constitutional rights of plaintiffs and the class they represent;

4. For an order requiring BRAC to account to plaintiffs, and each of them, and to the members of the class they represent, for all sums exacted from them pursuant to the above-mentioned collective bargaining agreement; to account in detail for the allocation, expenditure and disposition of said funds; to include in said accounting the indentity of the recipients, corporate, associate, partnership, individual or otherwise, as the case may be, of said funds;

5. For a permanent injunction restraining BRAC from enforcing as against plaintiffs, or as against any members of the class they represent, the compulsory union membership agreement provisions of the collective bargaining agreement described herein, insofar as such provisions are used for purposes unrelated to the negotiation and administration of collective agreements, or the adjustment and settlement of grievances and disputes;

6. That BRAC be required to communicate to all employees within the bargaining unit which includes plaintiffs that: (1) they are not required to obtain or maintain formal membership in BRAC as a condition of securing or maintaining employment with Western Air Lines; (2) they may protest the use of their dues and fees for purposes other than the negotiation and administration of collective agreements, or the adjustment and settlement of grievances and disputes, and that if they do protest, their dues and fees will be accordingly reduced or refunded.

Further, that defendant BRAC be required to establish a procedure for an accurate correlation of the dues reduction or refund to amounts actually expended by it for purposes unrelated to collective bargaining or the settlement of disputes; and if a refund procedure is utilized, that it ensure prompt return of such funds;

7. For a judgment allowing plaintiffs and the class they represent monetary damages for injuries sustained as a result of defendants' unlawful and unwarranted interference with and deprivation of their constitutional, civil, statutory and contractual rights.

8. For attorneys' fees, costs, and for such other and further relief as the Court may deem just and proper.

NATIONAL RIGHT TO WORK LEGAL DEFENSE FOUNDATION

By _____
Michael E. Merrill

By _____
Raymond J. LaJeunesse, Jr.

GIBSON & KENNERSON

By _____
Jonathan C. Gibson

GALL, LANE, POWELL & KILCULLEN

By _____
John L. Kilcullen

Attorneys for Plaintiffs

EXHIBIT A

This Agreement is made by and between Western Air Lines, Inc. and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, in accordance with the provisions of the Railway Labor Act, as amended.

(1) Each employee in a classification under the basic Agreement who is a member of the Union on the effective date hereof and each such employee who becomes a member after such date, shall, as a condition of employment, maintain membership in good standing in the Union.

(2) Each employee hired in a job classification under this Agreement after the effective date hereof shall, after completion of his/her sixtieth (60th) day of employment, acquire and maintain membership in the Union.

(3) Membership in the Union means the employee has tendered payment of initiation fees and regular monthly dues uniformly required by the applicable constitutional provisions of the Union for employees of like status and in accordance with the Railway Labor Act, as amended.

(4) It is understood and agreed that the requirements of Paragraphs (1) and (2) do not apply to employees to who membership is not available under the same terms and conditions as are generally applicable to other employees of like status.

(5) Employees required under this Agreement to maintain membership in the Union who are transferred or assigned to job classifications outside the basic Agreement, employees on leave of absence without pay for a period of excess of thirty (30) days, and employees on furlough shall not, during such periods, be required to maintain membership in the Union provided, however, upon return from leave, furlough or assignment or transfer to a job classification under the basic Agreement such employee must reinstate his membership within thirty (30) days.

(6) Employees required under this Agreement to acquire and/or maintain membership in the Union and who fail therein are subject to termination in accordance with the following provisions:

a. The General Chairman will notify the employee in writing of his failure to comply with the provisions of this Agreement and afford to

such employee the opportunity to comply, or if he disputes the charge that he has failed to comply, he shall be given the opportunity of a hearing with the General Chairman to verify the applicable facts.

b. If the facts show the employee has not complied with this Agreement and the employee has not, within fifteen (15) days thereafter, taken steps to comply, the General Chairman may notify the Company in writing that such employee is not entitled to continue in employment. Such notice should be sent to the Director-Labor Relations, with a copy to the employee.

c. Upon receipt of such notice, the Company will, within five (5) days, send to the employee a notice of termination which shall become effective three (3) weeks from the date of mailing, subject to Paragraph (8) hereof.

d. If the employee disputes the charge of noncompliance, he may appeal directly to the Director-Labor Relations. In this event, a hearing shall be held in the same manner as any other grievance and all time limits for decision and appeal shall apply.

e. It is understood and agreed that (1) the Company will not send a termination notice as sent forth in Paragraph (6)c in a disputed case until a final decision has been reached, and (2) at any time prior to termination, the employee may tender the necessary dues and/or initiation fees.

(7) An employee terminated at the request of the General Chairman under this Agreement shall be deemed to have been discharged for cause and the Company shall not be liable for any wages or pay claims of any type from such employee. In the event of a court judgment to the effect the discharge was improper, the Union hereby agrees to hold the Company harmless and will reimburse the Company for any costs whatsoever involved.

(8) In any event, it is agreed the Company will not be required to terminate any employee under this Agreement until the services of a qualified replacement is available.

(9) The Company agrees that upon receipt of a properly executed Authorization for Payroll Deduction, it will make a single monthly deduction from an employee's earnings, after other deductions

authorized by the employee or required by law have been made, to cover his current standard monthly Union dues uniformly levied in accordance with the constitution and by-laws of the Union, as set forth in the Railway Labor Act.

(10) Any Authorization for Payroll Deductions under this Letter of Agreement shall be effective two (2) weeks following its receipt by the Company's Payroll Department at the Company's General Office in Los Angeles, and shall apply to the next pay check from which dues deduction is made.

(11) The Company will remit to the designated Union office a check in payment of all dues collected as soon as practicable after the payday on which deductions were made.

(12) Collection of back dues, dues not deducted because of insufficient current earnings, dues missed because of clerical error or dues missed due to delay in receipt of the Authorization for Payroll Deductions shall be the responsibility of the Union and not subject to payroll deduction.

(13) In the event the amount of the standard dues uniformly levied are changed, it shall be the sole responsibility of the employee and the Union to notify the Company and to make any necessary adjustments between themselves of amounts deducted from the employee's earnings. So far as the Company is concerned, any such changes shall be made in accordance with the time limits set forth in Paragraph (10) of this Letter of Agreement.

(14) An Authorization for Payroll Deduction under this Letter of Agreement once executed and delivered to the Company shall be irrevocable for the term of the basic Agreement or for a period of one (1) year, whichever is the lesser, and shall renew itself for successive yearly or applicable periods thereafter unless the employee serves written notice on the Company to revoke such Authorization for Payroll Deduction at least sixty (60) days and not more than seventy-five (75) days prior to any periodic renewal date, provided, however, an Authorization for Payroll Deduction shall automatically be revoked if:

a. The employee transfers to a position with the Company not covered by the basic Agreement between the parties.

b. The employee's services with the Company are terminated.

c. The Union ceases to represent the employees covered under this Agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this 27th day of October, 1966.

FOR THE BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERDS [*sic*], FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES	FOR WESTERN AIR LINES, INC.
/s/ Lyle McKinney	/s/ Terrell S. Shrader
/s/ Richard R. Calkins	/s/ Philip E. Peirce
/s/ Robert L. Dennis	/s/ Dan A. Zaich

EXHIBIT B

WESTERN AIR LINES, INC.
LOS ANGELES INTERNATIONAL AIRPORT
6060 AVION DRIVE
LOS ANGELES, CALIFORNIA 90009

October 27, 1966

Mr. Lyle McKinney
General Chairman
Brotherhood of Railway Clerks
Suite 526, Airport Office Building
8939 South Sepulveda Boulevard
Los Angeles, California 90045

Dear Mr. McKinney;

This will confirm to you my commitment to grant to the employees as represented by the Air Transport Division of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees a Union Shop Agreement upon request and a showing that at least 85% of the employees covered are members in good standing.

Very truly yours,

/s/
TERRELL S. SHRADER

TSS:lm

EXHIBIT C

LETTER OF AGREEMENT

This Letter of Agreement is made and entered into by and between Western Air Lines and the Brotherhood of Railway and Airline Clerks.

The parties hereto agreed as follows:

(1) Paragraph (1) of the Letter of Agreement dated October 27, 1966 will be amended to read as follows:

> "Each employee in a classification under the basic agreement will be required to acquire and maintain membership in the Union except that each employee hired prior to October 27, 1966 who desires to maintain employment with Western but does not desire membership in the Union may, instead of acquiring membership, tender to the Union a service charge equal to the initiation fee and monthly dues that uniformly imposed on Union members."

(2) Employees who fail to meet the provisions of Paragraph (1) of this Letter of Agreement within sixty (60) days of the date of this letter are subject to termination in accordance with the provisions of the Letter of Agreement dated October 27, 1966.

This Letter of Agreement is signed this 26th day of February, 1971.

FOR THE BROTHERHOOD OF RAILWAY AND AIRLINE CLERKS

FOR WESTERN AIR LINES, INC.

APPROVED BY:

EXHIBIT D

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
AFL—CIO—CLC SYSTEM BOARD OF ADJUSTMENT NO. 451

AIR TRANSPORT DIVISION

March 1, 1971

Dear Non-Members - Western Airlines:

On February 26, 1971, BRAC and Western Airlines entered into Agreement whereby each employee in a classification under the basic agreements will be required to obtain and maintain membership in the Union, except that each employee hired prior to October 27, 1966 who desires to maintain employment with Western, but does not desire membership in the Union may, instead of acquiring membership, tender to the Union a service charge equal to the initiation fee and monthly dues which are uniformly imposed on Union members.

Employees who fail to meet the provisions of this Agreement within 60 days from the date of signing of said Agreement, are subject to termination in accordance with the provisions of the Letter of Agreement dated October 27, 1966.

The purpose of this letter is to make it convenient for you to fulfill your obligation to join the Union. Please be advised that you should tender the initiation fee of $10.00 and one month's dues of $6.50. In the event that you were a member of the Union prior to October 27, 1966, you should instead, tender a reinstatement fee of $15.00 and one month's dues of $6.50.

We are enclosing for your convenience, an application for membership and dues check-off form which should be completed by you and returned to us with the fees before April 27, 1971.

Very truly yours,

William H. Grant
General Chairman

EXHIBIT E

Western Airlines

March 4, 1971

TO WHOM IT MAY CONCERN:

In October of 1966, the Company and the BRAC signed a Maintenance of Membership Agreement which provided that any employee who at that time was a member of the Union or who was hired after 10/27/66 would be required to acquire and maintain membership. In addition, the Company agreed that at such time as 85% of the employees covered by the Agreement became members of the Union, the remaining 15% would be required to become members. As of 2/22/71, 85% of the employees covered by the Agreement are Union members.

This letter is to advise you that you are now subject to a Letter of Agreement signed on 2/26/71 which provides that you will be required to acquire and maintain membership in the Union; however, if you do not desire membership you may instead tender to the Union a service charge equal to the initiation fee and monthly dues that are uniformly imposed on Union members. This obligation must be met within 60 days (by April 26) or you will be subject to termination in accordance with the provisions of the Letter of Agreement dated 10/27/66. Within the next few days the Union will be contacting you directly concerning this obligation.

R. S. Neel, Jr.
Vice President, Service (Line)

BODLE, FOGEL, JULBER, REINHARDT and ROTHSCHILD
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Attorneys for Defendants

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ALLEN FAILS, JACK FROST, TWILA JOHNSON, BRENT ERKMAN, HELENE TAYLOR, CANDICE BROWN, GAYLE NELSON, JANIS DAMANTE, AUDREY RYAN, MARY ANN GROTE, SHIRLEY BALLARD, LOA YOUNG, MARGUERITE DOUGLAS, JOYCE EMMINGER and KENNETH WISOR, Plaintiffs, vs. BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES	CIVIL NO. 73-118-N FIRST AMENDED ANSWER TO COMPLAINT

SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE of the BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049,

Defendants.

Defendants BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES; BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES SYSTEM BOARD OF ADJUSTMENT NO. 451, AIR TRANSPORT DIVISION; CALIFORNIA STATE LEGISLATIVE COMMITTEE OF THE BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES; SKYLINER LODGE LOCAL 3001; SKYHARBOR LODGE LOCAL 3014; and ARROWLINER LODGE LOCAL 3049 (hereinafter collectively referred to as "BRAC"), for answer to the Complaint on file herein admit, deny and allege as follows:

1. In answer to the allegations of paragraph 1, defendants deny each and every allegation contained in said paragraph.

2. In answer to the allegations of paragraphs 2 and 3, defendants admit the allegations contained therein.

3. In answer to the allegations of paragraph 4, defendants admit that the California State Legislative Committee of the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes is an unincorporated association, subsidiary to and affiliated with the BRAC, that the Committee has as its purpose, in part, the sponsorship of legislation in the state of California, and that the Committee's activities are supported financially by thirty cents per month from the compulsory dues and fees paid by plaintiffs and others. Except as otherwise expressly admitted, defendants specifically deny

each and every allegation of paragraph 4. Defendants further deny that plaintiffs, or any of them, do or can represent any class.

4. In answer to the allegations of paragraph 5, defendants admit the allegations contained therein.

5. In answer to the allegations of paragraph 6, defendants admit that, at all times material hereto, Western has maintained a collective bargaining relationship with BRAC governing the terms and conditions of employment of plaintiffs and that BRAC was and is the exclusive bargaining agent for the craft or class of employees in which plaintiffs are employed. Defendants deny that plaintiffs, or any of them, do or can represent any class, and, except as otherwise expressly admitted, defendants specifically deny each and every allegation of paragraph 6.

6. In answer to the allegations of paragraphs 7 and 8, defendants admit that the agreements attached to the complaint as Exhibits A, B, and C are agreements executed by BRAC and Western and that said agreements set forth terms and conditions relating to the obligations of employees with respect to BRAC. Except as expressly admitted, defendants deny each and every allegation of paragraphs 7 and 8.

7. In answer to the allegations of paragraph 9, defendants admit that plaintiffs refer in their complaint to the union security provisions of the collective bargaining agreement as "compulsory union membership agreement."

8. In answer to the allegations of paragraph 10, defendants admit that plaintiffs Emminger, Wisor, Young, Taylor, Douglas, and Fails were advised by BRAC that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues. Defendants further admit that the aforesaid plaintiffs were so advised by a letter dated March 1, 1971, an example of which is attached to the Complaint as Exhibit D. In answer to the allegation that Western advised plaintiffs and the class they purport to represent that their employment with Western would be terminated if they refused to pay BRAC an initiation fee and monthly dues, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and, placing their denial on that ground, deny each and every such allegation. Defendants further deny that plaintiffs do or can represent any class, and, except as expressly admitted, defendants deny each and every allegation of paragraph 10.

9. In answer to the allegations contained in the first sentence of paragraph 11, defendants admit the allegations contained therein. In answer to the allegations contained in the second sentence of paragraph 11, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of said allegations and, placing their denial on that ground, deny each and every such allegation. Defendants further deny that plaintiffs do or can represent any class, and, except as expressly admitted, defendants deny each and every allegation of paragraph 11.

10. In answer to the allegations of paragraph 12, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, placing their denial on that ground, deny each and every such allegation.

11. In answer to the allegations of paragraph 13, defendants admit that plaintiffs Taylor, Brown, Nelson, Ryan, Grote, Young, Douglas, Emminger, and Wisor mailed to defendants a letter substantially in the form quoted in paragraph 13. Except as otherwise expressly admitted, defendants allege that they are without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 13 and, placing their denial on that ground, deny each and every such allegation. Defendants further deny that plaintiffs are members and representatives of a class of Western employees.

12. In answer to the allegations of paragraph 14, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, placing their denial on that ground, deny each and every such allegation. Defendants further deny that plaintiffs do or can represent any class.

13. In answer to the allegations of paragraph 15, defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and, placing their denial on that ground, deny each and every such allegation.

14. In answer to the allegations of paragraphs 16, 17, 18, 19, 20, 21, and 22, defendants deny each and every such allegation.

COUNT I

15. In answer to the allegations incorporated by reference in

paragraph 23 of the Complaint, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 14 above.

16. In answer to the allegations of paragraph 24, defendants admit that dues and fees moneys have been used in part for the activities described in sub-paragraph (C). Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 24.

17. In answer to the allegations of paragraph 25, defendants deny each and every allegation contained therein.

18. In answer to the allegations of paragraph 26, defendants admit that the Railway Labor Act authorizes the designation of BRAC as exclusive bargaining agent for all employees in the collective bargaining unit in which plaintiffs are employed, and empowers BRAC and Western to enter into the form of union security agreement described in paragraphs 7 and 8 of the Complaint. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 26.

COUNT II

19. In answer to the allegations incorporated by reference in paragraph 27, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 14 and 16 through 18 above.

20. In answer to the allegations of paragraph 28, defendants admit that, as the statutory exclusive bargaining representative of plaintiffs, BRAC owes each of them the fiduciary duty of fair representation. Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 28.

COUNT III

21. In answer to the allegations incorporated by reference in paragraph 29, defendants incorporate herein by this reference each and every admission, denial and allegation of paragraphs 1 through 14, 16 through 18, and 20 above.

22. In answer to the allegations of paragraph 30, defendants admit

each and every such allegation.

23. In answer to the allegations of paragraph 31, defendants deny each and every such allegation.

24. In answer to the allegations of paragraph 32, defendants admit that the dues reduction procedure set forth in paragraph 30 provides for no reduction of the initiation fees. Defendants further admit that Article 27, Section 4(a) of the BRAC constitution provides that three and one-third cents per month from each member's dues shall be applied to the Legislative Fund Account (Grand Lodge). Except as otherwise expressly admitted, defendants deny each and every allegation contained in paragraph 32.

25. In answer to the allegations of the Conclusion, defendants deny each and every allegation contained therein.

AS AND FOR THEIR FIRST AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

26. The Complaint fails to state a claim upon which relief can be granted in Count I, Count II, Count III, or any of them.

AS AND FOR THEIR SECOND AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

27. Plaintiffs, and any alleged members of the alleged plaintiffs' class, have failed to attempt to exhaust internal and administrative remedies available to them.

AS AND FOR THEIR THIRD AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

28. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 337, subdivision (1).

AS AND FOR THEIR FOURTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

29. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code

of Civil Procedure, Section 338, subdivision (1).

AS AND FOR THEIR FIFTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

30. The causes of action attempted to be set forth, and each of them, are barred by the statute of limitations provided under California Code of Civil Procedure, Section 343.

AS AND FOR THEIR SIXTH AFFIRMATIVE DEFENSE HEREIN, DEFENDANTS ALLEGE:

31. Insofar as the Complaint and Counts I, II, and III, and each of them, allege any claim arising out of the interpretation or application of the collective bargaining agreement between BRAC and Western Air Lines, said Complaint and Counts I, II, III, and each of them, are preempted by the provisions of the Railway Labor Act, 45 U.S.C., Section 184, and within the exclusive jurisdiction of the System Board of Adjustment.

WHEREFORE, defendants pray:

(1) That plaintiffs, and each of them, take nothing by their action;

(2) For costs of suit incurred herein; and

(3) For such other and further relief as the Court deems just and proper.

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and ROTHSCHILD
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UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ALLEN FAILS, et al. Plaintiffs, v. BROTHERHOOD OF RAILWAY, AIRLINE & STEAMSHIP CLERKS, etc., et al. Defendants.	Civil No. 73-118-N AMENDMENT TO COMPLAINT

Plaintiffs and class members amend their complaint herein as follows:

Count IV

33. Plaintiffs reiterate and reallege all of the allegations of Plaintiffs 1 thru 22, 24 thru 26, 28, and 30 thru 32.

34. At its quadrennial convention in 1967, Defendant BRAC first adopted an ostensible dues reduction procedure, by means of a constitutional amendment. That constitutional amendment is attached hereto, marked Exhibit F, and incorporated herein by reference.

35. At its quadrennial convention in 1971, Defendant BRAC revised that dues reduction procedure, again by means of a constitutional amendment, which is attached hereto, marked Exhibit G, and incorporated herein by reference. As revised, that provision is attached hereto, marked Exhibit H, and incorporated herein by reference.

36. Under Article 34, Section 1 of the BRAC Constitution, a constitutional amendment may be accomplished only at a convention, or by a referendum.

37. Flouting the requirements imposed by the constitution of the BRAC, its International President issued a Policy Statement (attached hereto, marked Exhibit I and made a part hereof by reference) which is in fact an amendment of the BRAC Constitution by executive fiat. Such action is specifically forbidden by numerous portions of the constitution, including the following:

> Article 13, detailing the International President's duties, specifies in Section 2 that he shall ". . . *enforce strict observance of the constitution*, laws, rules and regulations of the Brotherhood."
>
> Article 13, Section 3 emphasizes this duty, providing that the International President ". . . shall at all times strictly enforce the Grand Lodge Constitution, Statutes, for the Government of Lodges, Protective Laws and T.C. Division By-Laws of the Brotherhood and shall call to account any member or members of the Brotherhood violating the same."
>
> Article 13, Section 4 authorizes the International President to interpret the Constitution and laws, but limits this authority by stating that he may ". . . issue dispensation *not inconsistent with said Constitution* and laws."
>
> Article 5, Section 2(a) provides that: "It is the obligation and responsibility of every officer, subordinate unit and member to comply with the Constitution, . . . and the orders of its proper officers *when in conformity therewith*; . . . ."
> (Emphasis supplied in the foregoing quotations).

38. The action undertaken in issuance of the Policy Statement was motivated by a fraudulent, deceitful and dishonest attempt to accomplish two objectives: (1) to conceal the nature and extent of BRAC's actual expenditure of the plaintiffs' compulsory union dues and fees, and (2) to enmesh the plaintiffs in an illusory scheme to bilk them of their right not to pay dues and fees for purposes unrelated to the negotiation and administration of collective bargaining agreements, or for the settlement of disputes and grievances.

39. One indication of defendants' motives, as evidenced in the International President's issuance of the Policy Statement, appears in the fact that plaintiffs propounded interrogatories on January 21, 1974 which sought details on defendants' spending of dues and fees; on January 24, 1974 the Policy Statement was issued with a retroactive effective date, and officers and representatives of defendants were told by International President Dennis that "It is imperative that prompt action be taken on this matter. . . ;" and that "This matter should take precedence over any other duty you may have. . . ." These instructions are contained in letters to his subordinate officers.

40. The Policy Statement is inconsistent with the constitutional provisions of Article 27 (Exhibit H), and therefore is an invalid exercise, for many reasons, including but not limited to the amount of dues reduction, the procedure whereby it may be obtained, the persons authorized by BRAC to administer it, and the categories of employees represented by the union to whom it is applicable.

41. On its face, and in its operation and effect as described by International President Dennis, the Policy Statement is arbitrary, capricious, deceptive and invidiously discriminatory for the following reasons:

A. It applies to only a limited portion of defendants' improper expenditures of plaintiffs' dues and fees.

B. On its face, it does not encompass payments plaintiffs are compelled to make in the form of initiation fees and assessments.

C. It discriminates against all members and agency fee payers who decline to execute a checkoff, in that no method is specified as to how or when they are supposed to be able to obtain a refund; and International President Dennis has stated that such procedures are not yet established, and further that they will vary from one

Local Lodge and employee group to another, depending upon the arrangements he makes with the Local Lodge officers, the form of the collective bargaining agreement under which the affected employees work, and other factors.

D. Objectors are not provided with any means to secure information by which they may refute or authenticate the determination by various BRAC officials of the amount of political spending, or other data pertinent to the operation of the Policy Statement; and International President Dennis has stated that BRAC will refuse to provide such information, even on the various levels of appeals specified.

E. The initial determination of the amount of improper spending and the review thereof at the first two appellate levels is made by those persons having a vested interest in computing it at a minimum level; those same persons actively participate in the selection of recipients and beneficiaries of improper expenditures from plaintiffs' dues and fees.

F. The International President has demonstrated hostility toward members and agency payers exercising their right to become objectors. Further, he cannot serve an impartial appellate function as he has stated that he does and will work closely with the Board of Trustees in making their initial dues reduction computation. Further, he has a conflict of interest in serving in an appellate capacity or in any way affecting the dues reduction determinations, as he is President of the Railway Clerks Political League, a political organization which is the recipient or beneficiary of a substantial amount of contributions, services, supplies, and equipment from BRAC, for which the payment or cost thereof is derived at least in part from objectors' (including plaintiffs') compulsory dues and fees. The International President therefore has a vested interest in ensuring that such contributions and services are provided at a maximum level. This conflict is intensified by the fact that 6 of the 7 members of the Railway Clerks Political League Executive Committee are members of the BRAC Executive Council, which is the second step appellate forum.

G. At the final appellate level, those persons serving the Appeals Committee of the convention are appointed by BRAC's International President, (who decided step one of the appeal) with the

ratification of the convention.

H. There is no way to determine the amount of time plaintiffs would be required to expend in pursuit of the illusory appellate procedures, as:
   (1) no time limitations are provided in the Policy Statement,
   (2) even if other appeal procedures set forth in the constitution were followed, there is no time limit within which the International President or the Executive Council must render a decision,
   (3) conventions are scheduled four years apart.

I. Plaintiffs may not be represented on appeal by an attorney, unless such an attorney is a BRAC member, and International President Dennis has revealed that there are only approximately 15-25 of such attorneys in the entire United States who do not serve in a representative capacity for the union, which has approximately 200,000 members in the United States.

J. In order to present an appeal, the objector must travel to Chicago, Illinois, headquarters of the International President, and to whatever distant city has been selected for an Executive Council meeting or a convention. All expenses incurred by the objector, including attorneys' fees (in the unlikely event he found a BRAC member-attorney willing to represent him and acceptable to the objector), travel expenses, and costs incurred in establishing his evidence of the improper determination below must be borne by the objector, even if he succeeds in his appeal.

K. The Policy Statement intentionally imposes burdensome and illogical conditions upon potential objectors to chill their exercise of their right to object to improper use of their compulsory dues and fees, and to cause those who do object to suffer a net economic loss:
   (1) Although BRAC is making known the very existence of the Policy Statement by its newspaper (second class mail) and by regular mail in some cases, objectors must incur the expense of mailing their objection by registered or certified mail.
   (2) Objectors must bear the expense of making an individual notification of their objection.

(3) Those who have in the past objected, and defendants concede having received objections from some plaintiffs and others, must send a new request via certified or registered mail in order to validate their prior objection.

(4) Defendants require objectors to make an annual renewal of their objection, by certified or registered mail.

(5) While the Policy Statement purports to grant prior objectors 90 days within which they must renew their objections, that period begins from the effective date, January 1, 1974. The Policy Statement was not issued until January 24, 1974, notification to agency fee payers was not initiated until February 14, 1974 or later, and notification to members through the union newspaper was not begun until February 27, 1974. Thus the vast number of persons subject to the Policy Statement will have less than 30 days notice, rather than the 90 days.

42. Issuance of the Policy Statement is the latest example of defendants continuing bad faith effort to oppress employees they represent, and to stifle them in the exercise of rights guaranteed them in the First, Fifth and Ninth Amendments to the United States Constitution and by the Railway Labor Act, 45 U.S.C. § 151 *et seq*. Those rights preclude defendants from compelling plaintiffs to pay dues and fees for purposes other than the negotiation and administration of collective bargaining agreements, and for the adjustment and settlement of grievances and disputes.

43. Defendants' bad faith is further exemplified by the pendency of the within action for approximately one year, during which time defendants have continued their steadfast refusal to refund dues and fees improperly spent over plaintiffs' objection.

44. Irreparable harm, damage, and injury will be done to plaintiffs unless defendants are enjoined and restrained from subjecting plaintiffs to the provisions of the Policy Statement, as they will be denied their constitutional and statutory rights as above described. Plaintiffs have no adequate remedy at law for the harm, damage, and injury suffered as a consequence of the acts and conduct of defendants.

WHEREFORE, plaintiffs pray:

1. For an order determining that the adoption of the Policy

Statement was invalid,and is void and of no effect;

2. That the Court enjoin and restrain defendants from subjecting plaintiffs and others represented by BRAC to the Policy Statement;

3. For an order releasing objectors from any obligation to pay dues, fees, or assessments to defendants or any subordinate or affiliated organizations as a condition of employment;

4. For a judgment allowing plaintiffs and the class they represent monetary damages for injuries sustained as a result of defendants' unlawful and unwarranted interference with and deprivation of their constitutional, civil, statutory and contractual rights.

5. For attorneys' fees, costs, and for such other and further relief as the Court may deem just and proper.

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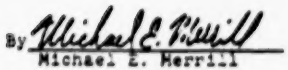
By 
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Attorneys for Plaintiffs

(Proof of service omitted in printing.)

EXHIBIT F

EXCERPTS FROM THE PROCEEDINGS OF THE 23RD REGULAR AND 9TH QUADRENNIAL CONVENTION OF THE BRAC, MAY 1967

• • •

One additional point we wish to bring out before reading the report of the committee is that we have now made a provision in respect to dues for associate members who are classified as members who retire because of age and perform no compensated service in industry over which the Brotherhood claims jurisdiction. Such members' dues would be the voluntary payment of one dollar ($1.00) per month. A retired member's interest changes from that of an active service employe, his main gains are achieved through legislative changes, rather than collective bargaining. It is, therefore, just and proper that a portion of his dues be earmarked for political activities. We have been advised that in view of the voluntary payment of these dues the procedure we are recommending in this area fully complies with applicable Federal law.

You will also note that we have added a section that permits a full dues paying member who does not desire to contribute to the legislative fund account to reduce his dues by 2c per month. This recommendation is being offered as a result of court litigation involving union shop contracts and the decisions rendered in the involved cases raises some doubt as to the use of union funds for political-legislative purposes against the wishes of a member. For this reason, our financial officers have calculated that approximately 2c per member per month is used for these purposes. Therefore, we have provided that these members have opportunity to not participate in this area to this limited extent. It is inconceivable to this committee that a member would not desire to participate in this very important function of our Brotherhood. However, the avenue of nonparticipation will now be available if a member insists.

Since your committee prepared its report, additional resolutions involving dues have been submitted. These resolutions are herewith listed by number—543, 545, 551, 552, 553, 562, 563, 570 and 574. Your committee has reviewed these resolutions and feels that the statements previously made in this report need not be changed nor its proposals altered.

Attention is directed to change in system board per capita tax which also would be reflected in Article 1, Section 15 (a), pages 106 and 107 of

the Protective Laws. Your committee will make the appropriate changes when codifying the laws after the convention.

For the delegates' information, you have heard the report of the Finance Committee just recently in regard to the Grand Lodge assuming the full cost for LABOR newspaper, and we are just bringing that to your attention at this time.

Your Committee on Grand Lodge Constitution and Laws proposes to amend Article 27, Section 2 (a), Section 4 (d) appearing on pages 60, 61, 62, and 63 of the Constitution of the Grand Lodge as follows:

PROPOSED CHANGES

Fees and Dues

Section 2 (a) Effective July 1, 1967, all full dues established by the 1963 Convention, or by other provisions of the Constitution and laws of the Brotherhood applicable to all members under the jurisdiction of each board of adjustment, shall be increased one dollar ($1.00) per member per month, except that no full dues shall be less than five dollars and fifty cents ($5.50) per member per month.

There shall be two kinds of dues applicable to members of the Brotherhood. Full dues shall be not less than five dollars and fifty cents ($5.50) per member per month, of which a minimum of one dollar and thirty cents ($1.30) per member per month shall be retained for state legislative tax and the use of the lodge; retention of membership dues which shall be one dollar ($1.00) per member per month, of which twenty-five cents (25c) shall be retained for the use of the lodge. Full dues shall apply to each member who received pay for forty (40) hours or more in any calendar month on a position in industry over which the Brotherhood claims jurisdiction, or the equivalent compensation under any agreement between an employer and the Brotherhood; to a member promoted to excepted or official positions and a member taking a voluntary leave of absence requiring approval of the organization. Each board of adjustment is authorized to fix uniform dues (above the minimum of five dollars and fifty cents ($5.50) per member per month) to apply to all members under the jurisdiction of the board, provided such dues shall be sufficient to meet Grand Lodge per capita tax, lawfully approved board of adjustment per capita tax and State Legislative Committee per capita

tax, subject to the approval of the International President.

Retention of membership dues shall apply to a member who performs no service in a calendar month due to reduction in force, furlough, military service, sickness, disability, resignation, and a member who receives pay for less than forty (40) hours in any calendar month on a position in industry over which the Brotherhood claims jurisdiction; and a member working in another craft in the industry where he is required to join another union under a union shop agreement.

Members who have retired because of age and who perform no compensated service on a position in industry over which the Brotherhood claims jurisdiction will be classified as associate members, with full rights to participate in the Death Benefit Department, if qualified, receipt of "The Railway Clerk," with right to attend lodge meetings of the Brotherhood, except they shall have no vote in the election of officers, or on matters pertaining to wages, rules, working conditions or grievances, and they may retain such membership by the voluntary payment of one dollar ($1.00) per month.

PROPOSED CHANGES

That Article 27, Section 4 (a) be amended to read as follows:

Per Capita Tax

Section 4 (a) Grand Lodge per capita tax shall be two dollars and ten cents ($2.10) per month or six dollars and thirty cents ($6.30) per quarter on full dues paying members, except that no per capita tax is payable on new or reinstated members for the quarter in which they apply for membership; seventy-five cents (75c) per month or two dollars and twenty-five cents ($2.25) per quarter on reduced dues paying members and shall be apportioned quarterly by the International Secretary-Treasurer to the different funds and fund accounts as follows:

Per Capita Tax on Full Dues Paying Members

General Fund Account (Grand Lodge)	$3.45
Protective Fund Account (Grand Lodge)	.45
Convention Fund Account (Grand Lodge)	.24

Death Benefit Fund (Grand Lodge) 1.20

Official Publication Fund Account (Grand Lodge) ..... .60

Organization Fund Account (Grand Lodge) ..... .30

*Legislative Fund Account (Grand Lodge) ..... .06

Total $6.30

*Any member who does not desire to contribute to the Legislative Fund Account may have his dues reduced two cents (2c) per month by notifying the lodge secretary in writing and paying his dues directly to the lodge secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of notice.

Retention of Membership Per Capita Tax

General Fund Account (Grand Lodge) ..... $ .15

Convention Fund Account (Grand Lodge) ..... .24

Death Benefit Fund (Grand Lodge) 1.20

Official Publication Fund Account (Grand Lodge) ..... .60

*Legislative Fund Account (Grand Lodge) ..... .06

Total $2.25

*Any member who does not desire to contribute to the legislative fund Account may have his dues reduced two cents (2c) per month, by notifying the lodge secretary in writing and paying his dues direct to the lodge secretary. Reduction in dues becomes effective with the month following the month in which the member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of notice.

Associate Membership Per Capita Tax

General Fund Account (Grand Lodge) ..... $ .00

Convention Fund Account (Grand Lodge) ..... .00

Death Benefit Fund (Grand Lodge)	1.20
Official Publication Fund Account (Grand Lodge)	.60
*Railway Clerks Political League	.45
Total	$2.25

*Any associate member who does not desire to make a voluntary contribution to Railway Clerks Political League may have his dues reduced 15c per month by notifying the lodge secretary in writing and making his payment direct to the lodge secretary. Reduction in dues will become effective with the month following the month in which the associate member notifies the lodge secretary in writing and cannot be retroactive. The lodge secretary will acknowledge receipt of the notice.

NOTE: An associate member is a member who has retired because of age and who performs no compensated service on a position in industry over which the Brotherhood claims jurisdiction, and per capita tax received on him is only allocated to those funds in which he has an interest or from which he receives service. The purpose of the voluntary contribution to Railway Clerks Political League is to advance and protect his interest through political activity in the legislative field and in particular to work for improvement of retirement systems established and maintained under law.

That Article 27, Section 4 (d) be amended to read as follows:

Board of Adjustment Per Capita Tax

(d) Board of Adjustment per capita tax shall be not less than two dollars and ten cents ($2.10) per member per month.

Mr. Chairman, I move adoption of the committee's report.

DELEGATE DEE: I second the motion.

GRAND PRESIDENT DENNIS: You have heard the committee's report. What is your pleasure?

The delegate at Mike 4.

DELEGATE JOHN J. CIRUCCI (Lodge 662): I would like to have a point of privilege. It is not spelled out what secretary collects the dues. Is that the recording secretary or is it the financial secretary?

GRAND PRESIDENT DENNIS: I can't hear you, brother.

DELEGATE BARFIELD (Lodge 1157): Mr. Chairman and delegates to the Convention: I rise in opposition to the committee's report as it is now written because it proposes to increase—not because it proposes to increase the dues, but because the proposed increase is too small. It is entirely insufficient in that it fails to provide the proper financial relief to the local lodges. As all of you know, the membership of the local lodges has declined steadily for the past several years, and all present indications point to a continued decline for some time to come. This reduction in membership has not resulted in a corresponding decrease in the work and duties to be performed by the local lodge officers. Rather, the officeres are now confronted with complex problems never dreamed of several years ago, such as computers, and with the policing of such agreements as the Union Shop Agreement and the February 7, 1965 Stabilization of Employment Agreement. The vast majority of the local lodge officers receive salaries which were fixed years ago and which even at that time were not commensurate with the responsibilities and duties required of them.

Instead of the salaries of the local lodge officers being adjusted periodically in proportion to the general wage increases applicable to the members we represent and in proportion to the salary increases voted for the system board officers and the Grand Lodge officers, it has been necessary in many cases to reduce the already inadequate amounts paid to the lodge officers. These reductions have been due solely to the loss of revenue resulting from the shrinkage of Class 1 membership.

Many of the lodges I represent have received communications from the Grand Lodge directing them to reduce expenses. In most of these cases, the directives can be complied with only by reducing the ridiculously low salaries of the local lodge officers. Other lodge expenses have also risen, just as the Grand Lodge and system boards' expenses have risen.

The increase proposed by the Committee on Laws would in the case of a lodge with one hundred Class 1 members amount to only $10 per month. Why not get what we need now? It will be four years before we

have another convention. Also by taking action at this time, we can eliminate the necessity of attempting to effect the dues increase through the individual system boards of adjustment.

Therefore, I move that the motion now before the convention be amended to provide for an increase in dues of $1.50 per month, with minimum dues of $6.00 per month with a 50c per month increase in the Grand Lodge per capita tax, a 50c per month increase in the system boards' per capita tax, and a 50c per month increase in the amount retained by the lodges for their use.

Thank you.

DELEGATE C. M. ENGLADE (Lodge 118): I second the amendment to the motion. (Applause)

GRAND PRESIDENT DENNIS: All right. You heard the amendment, and it is seconded, which as I understand it would establish a six dollars minimum dues instead of a five dollar and fifty cents minimum as proposed by the committee, with 50c going to the Grand Lodge, 50c to the system board, and 50c to the local lodge.

The delegate at Mike 2.

DELEGATE CHARLES H. PURKISS (Lodge 182): I am secretary-treasurer of the California State Legislative Committee. I got a little bit thinned out on the funds for increasing for our state legislative per capita. In trying to look ahead for four years with, I think, the increasing amount of political action we are going to have to take, coupled with the fact that California is a long state, being some twelve hundred miles in length, I would like to, if it is legally possible, amend the good brother's amendment by making that portion 40c to the local lodge and 10c to the state legislative committees.

. . . Cries of "No" . . .

GRAND PRESIDENT DENNIS: Is there a second to that amendment? It has to have a second on the amendment.

DELEGATE LESLIE A. CRAVER (Lodge 45): Mr. Chairman, I second that amendment.

GRAND PRESIDENT DENNIS: All right, you now have a motion made by the Laws Committee. You have an amendment to that motion made by Brother Barfield for fifty, fifty and fifty, and now you have an amendment to the amendment, which would make it fifty Grand Lodge, fifty System Board, forty cents to the local lodge, with a provision for ten cents of the fifty cents to go to the legislative committee from the local lodge. Now, that is all of the amendments that there can be to the motion.

We will now vote on the amendment to the amendment, which was the last brother's proposition. That is that out of the fifty cents the local lodge receives, ten cents of it would go to the legislative committees. That is the amendment to the amendment that we are voting on at the present time. Are you ready to vote?

DELEGATE HARVEY N. M. PATTERSON (Lodge 2307): Mr. Chairman, diversity is the spice of life. I am just the opposite to what the speaker was on Mike 4. I think we need an increase in dues, but I think that the committee has recommended too much. I would like the delegates to look at Resolution 552. I think that if we get a standard increase in dues that is not too great and possibly will do the job—I understand there is leeway, that local lodges can make assessments with the permission of the Grand President and get as much money as they need to operate, or the system boards can do likewise.

Now, Mr. Chairman, you said —

GRAND PRESIDENT DENNIS: Are you talking for or were you talking against what?

DELEGATE PATTERSON: I am against the committee's recommendation of $1.00 increase.

GRAND PRESIDENT DENNIS: Well, that is out of order at this time, because we are now discussing the amendment to the amendment. (Applause) So you are out of order at the present time. You can talk later.

DELEGATE PATTERSON: Can I move a substitute?

GRAND PRESIDENT DENNIS: I will recognize you later.

DELEGATE PATTERSON: I will wait.

GRAND PRESIDENT DENNIS: On this question before it is voted, I will recognize you.

VOICE FROM THE FLOOR: I move for the question.

GRAND PRESIDENT DENNIS: Wait a minute now.

. . . Cries of "Second" . . .

GRAND PRESIDENT DENNIS: Does anybody care to speak on the amendment to the amendment?

Microphone 4, and then Microphone 2.

DELEGATE HARRY H. ROACH (Lodge 335): Grand Worthy President, I have no intention of questioning with respect to the amount of the dues, but I want to know if we are going to be allowed to make other amendments which have nothing to do with the amounts of the dues, setting the amounts of the dues? Are we going to be allowed that privilege?

GRAND PRESIDENT DENNIS: Well, we have a motion on the floor, and we have an amendment to the motion, and we have an amendment to the amendment. Until the motion is passed, after we get rid of some of these amendments to the amendments and the amendment to the motion, then we will open it up again, if necessary.

DELEGATE ROACH: May I make one more point: Worthy President, under the Rules' Committee, rules to make a motion you are supposed to approach the microphone with your second. You are also supposed to submit amendments in writing.

GRAND PRESIDENT DENNIS: Well, I understand all that, and these people who have submitted these amendments will have to bring them up here in writing before any action can be taken on them.

DELEGATE ROACH: Then I take it that I will have an opportunity to submit an amendment that is not in conflict with the amendments?

GRAND PRESIDENT DENNIS: It all depends what you are trying to amend, brother. I can't give you a yes or no answer until I know what

you are trying to do. We have to take these in proper order now. Is there anybody who cares to speak specifically to the amendment to the amendment?

The delegate at Mike 3.

DELEGATE JESSE B. ASHLEY (Lodge 2032): Now, many of you were present in St. Louis in '43 when I literally put the state legislative committees on the map. I also have, since then, supported whatever was undertaken to give them financial support.

Now, it seems to me they are adquately financed. I can't help it because California is 900 miles away. We have given them 15 cents a month per member out of this whole organization, and I think that is enough. (Applause)

There is such a thing as building up a treasury to the point where you become top heavy with money. Then somebody is going to pilfer the till.

For God's sake, let's be reasonable. You have 15 cents per member. Let's vote this amendment to the amendment down. (Applause)

GRAND PRESIDENT DENNIS: Does anybody else wish to speak for or against the amendment to the amendment?

DELEGATE C. R. TRUDE (Lodge 2207): I have a point of information. What I want to know is if it will be permissible for our present assessments, under the present situation, to be continued and be allowed? If so, I will move for the question.

GRAND PRESIDENT DENNIS: Well, your present assessments are what? You do not explain what those assessments are.

DELEGATE C. R. TRUDE: They have been approved by you, Brother Chairman.

GRAND PRESIDENT DENNIS: Those assessments were only approved for a certain definite period of time, isn't that correct?

DELEGATE TRUDE: I talked to one of my good brothers the other night, and he said our present increased dues assessment would be allowed in addition to whatever the Convention allowed. I would like a

clarification on that.

GRAND PRESIDENT DENNIS: No. We would have to look at your problem again and see whether you needed any kind of special assessment.

DELEGATE TRUDE: I was afraid of that.

GRAND PRESIDENT DENNIS: That would mean they would not be allowed.

DELEGATE TRUDE: Then let's go for ten dollars dues. I ask for the question.

GRAND PRESIDENT DENNIS: The brother at Mike 4.

DELEGATE ROBERT M. CURRAN (Great Northern System Board No. 46): I rise to speak against the amendment to the amendment and in favor of the committee's report. I recognize that some of our people need more money. Some of the lodges need more money. Some of the system boards need more money. I presume the Grand Lodge representatives have asked for an adequate amount of money to take care of their needs for the next four years, too.

All I am asking the brothers here, who need more money, is that they do not impose their needs on those of us who do not need more money. (Applause)

If their needs are as they analyzed them, then I suggest they follow the Constitution and go back home and assess their needs at their system board level. We will take care of our finances, and we would not want somebody else to impose their financial difficulties on us.

Mr. President, I would ask the delegates to vote down the amendments and to support the committee's report. I also would like to suggest another thing before I leave the mike, and that is that we only charge $10 initiation fee, and I think herein lies a place to obtain more money. We have really cheapened our organization, in my judgment, by asking only for a $10.00 initiation fee. I know of organizations that do not do as well, that do far less well, than the Brotherhood of Railway Clerks, and they are charging $50.00 initiation fee. If there is a need for more money, they might look there for it. Otherwise, I suggest they go to their system board and take care of it there.

Please don't impose more dues on our board. Thank you. (Applause)

GRAND PRESIDENT DENNIS: The delegates at Mike 3.

DELEGATE E. C. WILSON (Lodge 590): On the amendment to the amendment, Mr. Grand President, seeing that this morning this body voted down any increase in legislative tax, I move the previous question. (Applause)

GRAND PRESIDENT DENNIS: Is there a second to that motion?

DELEGATE HICKMAN (Lodge 154): I second the motion.

GRAND PRESIDENT DENNIS: The previous question has been called for. That cuts off debate. If the majority vote in favor of the previous question, debate is cut off.

Those in favor of voting the previous question please hold up your right hand. Down hands. Those opposed? The previous question has been called for. We will now vote on the amendment to the amendment. That is, as I understand it, that the dues would be established at a $6.00 minimum 50 cents going to the Grand Lodge, 50 cents to the system board, 50 cents to the Local Lodge, with a guarantee that 10 cents more would go to the legislative committee out of that 50 cents. That is the amendment to the amendment, as I understand it.

Those in favor of the amendment to the amendment raise your right hand. Down hands. Those opposed? Down. The amendment to the amendment is lost. (Applause)

Now we are voting on the motion as amended, which would give the Grand Lodge 50 cents, the System Boards 50 cents, the Local Lodges 50 cents, and would establish a $6.00 minimum dues. This is Brother Barfield's amendment.

Those in favor of that amendment please raise your right hand. Down hands. Those opposed? The amendment to the motion is lost. (Applause)

We are now voting on the committee's report. The committee's report is as read and as stated and as printed in the book which you have before you. Those in favor—the delegate at Mike 4.

DELEGATE HARRY ROACH (Lodge 335): Mr. Chairman, I have here what may be a solution to this, and I would like to have the opportunity to read it—

GRAND PRESIDENT DENNIS: The previous question has been put, brother.

DELEGATE ROACH: It has nothing to do with the—

GRAND PRESIDENT DENNIS: Just a minute, brother. The previous question was called for, and we have to continue through, without suggestions. If you have a suggestion to make after the vote is taken, why, you can make your suggestion and maybe it will be accepted by the Convention.

Why does the other brother rise?

DELEGATE G. E. MURPHY (Lodge 3048): Point of personal privilege. The expenditures voted by this Convention are, in my opinion, just and equitable. However, I am not at this Convention to vote my will. I am here to vote the will of the people who sent me here, who did me the honor of sending me here, and until such time as their inequities are adjusted, I am unalterably opposed to a dues increase of any kind.

GRAND PRESIDENT DENNIS: Brother, your point of privilege is not well taken. You are out of order. Please release the mike.

We are now voting on the motion as submitted by the Laws Committee. Those in favor please raise your right hand. Down hands. Those opposed? The motion is adopted by more than a two-thirds vote. (Applause)

Mike 4.

DELEGATE ROACH: Now I will make my point, and maybe the Convention will wish to reconsider from the standpoint that it has nothing to do with the principles involved in the motion that has just been passed.

I call the delegates' attention and the committee's attention to Page 11 of their proposed changes of Article 27, Section 2(a), the second paragraph, in particular, the first and last sentence. If one understands

the problems of the smaller lodges, it is difficult for them to persuade a system board to increase dues to satisfy their needs when the consequences of such an action may result in raising the dues of many of our members who belong to lodges able to function properly under the proposed full dues.

Therefore, the manner in which the proposed change is worded will continue an injustice to many of our members from the standpoint that system boards may or may not raise dues of all members in order to provide funds, sufficient funds, for the operation of smaller lodges. However, in order to correct this situation and provide for the peculiar and individual needs of all lodges that will be equitable to the unique situation of each, each lodge understands its own needs and this may allow them to fix these needs, subject to the approval of the International President.

Therefore, in order to correct this situation, I move the proposed wording be amended as follows:

I move Committee Report No. 28, a proposal to amend Article 27, Section 2(a)—

GRAND PRESIDENT DENNIS: Brother—

DELEGATE ROACH: —Pages 60 and 61—

GRAND PRESIDENT DENNIS: Just a minute, brother. I think you are trying to reverse the action we have just taken.

DELEGATE ROACH: Wait until I have finished, and then you can make your ruling.

GRAND PRESIDENT DENNIS: Just a minute. You are reading from a statement, and you have not submitted any statement to us in writing.

DELEGATE ROACH: I will submit it upon the compietion of my reading.

GRAND PRESIDENT DENNIS: I would have to rule that you are now trying to reargue the question.

DELEGATE ROACH: No, I am not, Mr. President. If you will hear me out—

GRAND PRESIDENT DENNIS: If you want to submit your paper to the committee and ask them to give it some consideration, they can look at it. They have not seen it yet. I have not seen it.

DELEGATE ROACH: May I bring it up and let them look at it?

GRAND PRESIDENT DENNIS: You may bring it up here.

DELEGATE ROACH: Fine. That is all I ask.

GRAND PRESIDENT DENNIS: All right. The Delegates at Mike 3.

DELEGATE J. R. ADAMS (Lodge 519): I would like to be recorded as having voted "No," not that I disagreed with the action that was taken by this body; but those were my instructions when I left my lodge.

GRAND PRESIDENT DENNIS: Your vote will be recorded. If there is anybody else who wants his vote recorded, let him announce it or send his name up to the secretary. He will take your name and your lodge number.

Brother Weaver? Mike 2.

DELEGATE WEAVER: At this time I wish to move reconsideration of the committee's report, as a parliamentary procedure, in order that this will lock in the report. I have my seconder here with me.

DELEGATE C. J. LOWE (Lodge 715): I second the motion.

GRAND PRESIDENT DENNIS: Did you vote against the committee's report?

DELEGATE WEAVER: I voted in favor of the committee's report.

GRAND PRESIDENT DENNIS: So you have the right to move for reconsideration.

DELEGATE WEAVER: Yes. And I think it ought to be voted down and then this locks in the report.

GRAND PRESIDENT DENNIS: I hope they vote it down. We will see how they vote. The purpose of this is to lock in the question, so I hope you vote down the request for reconsideration.

Those in favor of reconsideration of this matter raise your right hand. Down hands. Those opposed to reconsideration raise your hand. Down hands. Thank you. The question is locked in.

The committee may proceed.

DELEGATE TOPPEN: Committee Report 20, Page 14, Resolution No. 46. This resolution proposes to amend Article 27, Section 2(b) page 61, to provide for the climination of dues stamps and a simplified method in allowing appropriate credit on the quarterly per capita tax report for sick-out-of-work members.

Your committee has analyzed this proposal and feels that the dues stamp and dues card system currently used by our Brotherhood is the only effective means for a member having a record of his dues payment and having a means of establishing a membership in good standing document. For these reasons, we recommend nonconcurrence.

Mr. Chairman, I move adoption of the committee's report.

DELEGATE DEE: I second the motion.

GRAND PRESIDENT DENNIS: You have heard the report. What is your pleasure?

. . . Cries of "Question" . . .

GRAND PRESIDENT DENNIS: Those in favor raise your right hand. Down hands. Those opposed. The report is adopted by more than two-thirds.

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